

No. 10364

United States
Circuit Court of Appeals
For the Ninth Circuit.

— 2345

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

REGISTER PUBLISHING CO., Ltd., a corpo-
ration,

Respondent.

Transcript of Record
In Two Volumes

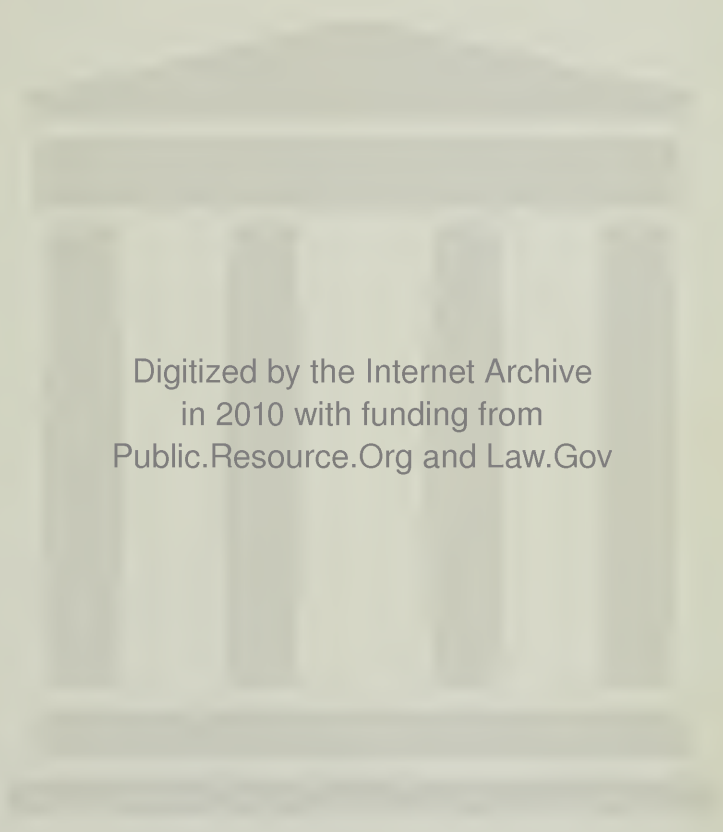
VOLUME I

Pages 1 to 337

Upon Petition for Enforcement of an Order of the National
Labor Relations Board

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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BOARD'S EXHIBIT No. 1-A

N. L. R. B. 29

(Revised 8-9-41)

United States of America
Before The National Labor Relations Board
21st Region
Case No. XXI-C-1737

Date Filed March 27, 1942

In the Matter of—

REGISTER PUBLISHING CO. LTD.,

and

SANTA ANA INTERNATIONAL TYPO-
GRAPHICAL UNION No. 579.

FIRST AMENDED CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Register Publishing Co., Ltd., at Santa Ana, California, employing 78 workers in Newspaper publishing business has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1), (3) and (5) of said Act, in that on or about March 1, 1940, and at all times thereafter, it, by its officers, agents and employees, refused to bargain collectively with the authorized representatives of the Santa Ana International Typographical Union No. 579, a labor organization, chosen by a majority of its employees in a unit consisting of all employees in the composing room of

its Santa Ana Register Plant for purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment. A unit consisting of all employees in the composing room of the Santa Ana Register Plant is an appropriate unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment, and by refusing to bargain with the duly designated representative of the majority of the employees in said unit, the Company, by its officers, agents and employees, did engage in and is engaging in unfair labor practices within the meaning of Section 8, subsection (5) of the Act.

On or about July 29, 1941, and at all times since that date, the Company has refused to reinstate and employ:

A. L. Berkland	J. W. Jones
F. L. Berkland	W. A. Lawrence
C. W. Brakeman	J. H. Patison
William O. Bray	L. C. McKee
G. J. Bronzen	J. W. Parkinson
Charles Clayton	J. A. Sherwood
G. W. Duke	V. C. Shidler
E. W. Ellis	J. E. Swanger
W. H. Fields	E. Y. Taylor
G. L. Hawk	C. C. Thrasher

Said refusal to reinstate and employ being for the reason that said employees, and each of them, had engaged in concerted activities for the purpose of collective bargaining and other mutual aid and pro-

tection through their designated representative, the Santa Ana International Typographical Union No. 579, and by said refusal to reinstate and employ said persons and each of them, the Company is engaging in unfair labor practices within the meaning of Section 8, subsection (3) of the Act.

By the acts set forth above, and by written and oral statements to its employees derogatory to the Union, and by attempting to organize a back to work movement among its striking employees, the Company, by its officers, agents and employees, has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and affiliation of organization, and name and official position of the person acting for the organization.)

SANTA ANA INTERNATIONAL
TYPOGRAPHICAL UNION
No. 579

J. W. JONES, Vice-President
837 N. Garnsey St., Santa Ana,
California
Telephone - Santa Ana 5714-J

Subscribed and sworn to before me this 27th day of March, 1942, at Los Angeles, California.

CHARLES M. RYAN,

Attorney, 21st Region, National
Labor Relations Board,
Los Angeles, California.

BOARD'S EXHIBIT No. 1-C

[Title of Board and Cause.]

COMPLAINT

It having been charged by Santa Ana International Typographical Union No. 579, hereinafter called the "Union," that Register Publishing Co., Ltd., hereinafter called the "Respondent," at Santa Ana, California, has engaged in and is now engaging in certain unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, approved July 5, 1935, 49 Stat. 449, hereinafter referred to as the "Act," the National Labor Relations Board, by the Regional Director for the Twenty-first Region, designated as agent of said National Labor Relations Board, by its Rules and Regulations—Series 2, as amended, hereby issues its Complaint and alleges the following:

1. Respondent, Register Publishing Co., Ltd., is and at all times hereinafter referred to has been a corporation organized and existing under and by virtue of the laws of the State of California. Said

Company has its principal office and place of business at Santa Ana, California. It is engaged in the publication, distribution and sale of a daily newspaper, known as the "Santa Ana Register," hereinafter referred to as the "Register."

2. The Register is a newspaper published daily, including Sunday, by Respondent, at its plant at Santa Ana, California. Said newspaper is distributed throughout the State of California. In addition, a substantial portion of its daily circulation is sold and distributed outside the state of California.

3. Respondent, in the course and conduct of its business, as described in paragraphs 1 and 2 above, causes and has continuously caused large quantities of raw materials used in its business, including specifically, but without limitation thereby, news print and mats to be transported to Respondent's place of business at Santa Ana, California, from other states of the United States and from foreign countries.

4. Respondent, in the course and conduct of its business, as described in paragraphs 1, 2 and 3 above, daily supplies news to, and daily receives news from, several well known news services, which gather and disseminate news nationally and internationally. Said Respondent, in the course and conduct of its business, likewise daily receives and publishes numerous feature services, the material for many of which is prepared and originates in states of the United States other than the state of California. Further said Respondent, in the course and conduct of its business, daily publishes in substan-

tial amounts advertising originating outside the State of California.

5. Santa Ana International Typographical Union No. 579, hereinafter called the "Union," is a labor organization within the meaning of Section 2, subsection (5) of the Act.

6. Respondent, by its officers and agents, R. C. Hoiles and C. H. Hoiles, while engaged at its Santa Ana plant, as described in paragraphs 1, 2, 3 and 4 above, at various and divers times since March 1, 1940, has made known to its employees its hostility toward labor organizations, particularly the Union, by criticizing and condemning unions as rackets and union members as racketeers, by criticizing and condemning the principles of collective bargaining, by questioning employees regarding their loyalty to the union, by statements to the effect that unions have never benefited anyone and employees are better off without a union, and by statements to the effect that it would never, under any circumstances, enter into a written signed contract with the Union, and by promises of reward to employees if they would withdraw from membership in and, activity in behalf of the Union; and by such acts and each of them the Respondent did interfere with, coerce and restrain and is interfering with, coercing and restraining its employees in the exercise of rights guaranteed in Section 7 of the National Labor Relations Act and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

7. The acts alleged in paragraph 6 above, oc-

curred on or about March 1, 15, 20 and 27, 1940, and on or about April 15, 1940, and on or about May 3 and 16, 1940, and on or about January 15, 1941, and on or about March 1, 1941, and on or about April 3, 18, 23, 26, 29 and 30, 1941, and on or about May 1, 2, 3, 4 and 5, 1941, and on or about August 2, 1941, and on numerous occasions thereafter up to and including the date of this complaint.

8. A unit for the purpose of collective bargaining composed of all employees in the composing room of Respondent's Santa Ana plant would insure to Respondent's employees the full benefit of the right to self-organization and would otherwise effectuate the policies of the National Labor Relations Act, and is therefore a unit appropriate for the purposes of collective bargaining.

9. Prior to March 1, 1940, and at all times thereafter, a majority of the employees in the unit set forth in paragraph 8 above did designate the Union as their representative for the purpose of collective bargaining with Respondent. By virtue of said designation, the Union is and has been at all times since March 1, 1940, the exclusive representative of all employees in the unit set forth above for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment.

10. The Respondent, while engaged at its Santa Ana plant as aforesaid, on or about March 1, 1940, and at all times thereafter, refused and failed and does now refuse and fail to bargain collectively in good faith with respect to rates of pay, wages, hours

of employment and other conditions of employment with the Union, as exclusive representative of all employees in the unit set forth in paragraph 8 above. By such acts and each of them, Respondent did engage in and is now engaging in unfair labor practices within the meaning of Section 8, subsection (5) of the Act.

11. The Respondent, by its acts and each of them as set forth in paragraph 10 hereof, did interfere with, coerce and restrain, and is interfering with, coercing and restraining its employees in their exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

12. On or about May 1, 1941, Respondent's employees in the unit set forth in paragraph 8 hereof did go on strike and did picket Respondent's plant. The strike is still being carried on. Said strike was caused by and has been prolonged by Respondent's unfair labor practices alleged in paragraphs 6 and 10 hereof.

13. On or about July 29, 1941, the Union did request the Respondent to reinstate and employ the employees and each of them who had gone on strike on or about May 1, 1941, namely:

A. L. Berkland	J. W. Jones
F. L. Berkland	W. A. Lawrence
C. W. Brakeman	J. H. Patison
William O. Bray	L. C. McKee
G. J. Bronzen	J. W. Parkinson

Charles Clayton	J. A. Sherwood
G. W. Duke	V. C. Shidler
E. W. Ellis	J. E. Swanger
W. H. Fields	E. Y. Taylor
G. L. Hawk	C. C. Thrasher

and the Respondent has at all times refused and failed, and does now refuse and fail, to reinstate and employ the employees and each of them who went out on strike on or about May 1, 1941, said refusal to reinstate and employ the aforesaid employees and each of them being for the reason that they had formed, joined and assisted a labor organization of their own choosing, to wit, the Union, and had engaged in concerted activities for the purposes of collective bargaining and other mutual aid and protection.

14. Respondent, by its refusal to reinstate and employ the employees and each of them who went out on strike on or about May 1, 1941, as set forth in paragraph 13 above, did discriminate and is now discriminating in regard to hire and tenure of employment of the above-named employees and each of them, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subsection (3) of the Act.

15. Respondent, by its acts and each of them, as set forth in paragraphs 13 and 14 above, did interfere with, coerce and restrain and is interfering with, coercing and restraining its employees in their exercise of the rights guaranteed in Section 7 of the National Labor Relations Act and did thereby en-

gage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

16. The acts of Respondent as set forth in paragraphs 6, 10, 11, 12, 13 and 14 of this Complaint, occurring in connection with the operations of Respondent as described in paragraphs 1, 2, 3 and 4 above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and have led and now lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

17. The aforesaid acts of Respondent, as set forth in paragraphs 6, 10, 11, 12, 13 and 14 of this Complaint, constitute unfair labor practices affecting commerce within the meaning of Section 8, subsections (1), (3) and (5) and Section 2, subsections (6) and (7) of the National Labor Relations Act.

Wherefore, the National Labor Relations Board, on the 23d day of April, 1942, issues its Complaint against Register Publishing Co., Ltd., Respondent herein.

NOTICE OF HEARING

Please Take Notice that on the 7th day of May, 1942, in the Council Chambers on the third floor of the City Hall at Third and Main Streets, in Santa Ana, California, at 10:30 in the forenoon, a hearing will be conducted before the National Labor Relations Board, by a Trial Examiner to be designated by it in accordance with its Rules and Regulations—Series 2 as amended, Article IV and Article II,

Section 23, on the allegations set forth in the Complaint hereinabove set forth, at which time and place you will have the right to appear in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Twenty-first (21st) Region, acting in this matter as the agent of the National Labor Relations Board, an answer to the foregoing Complaint, on or before the 6th day of May, 1942.

Enclosed herewith for your information is a copy of the Rules and Regulations, Series 2 as amended, made and published by the National Labor Relations Board, pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of the said Rules and Regulations.

Please Take Notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown, directs that a given exhibit need not be duplicated.

In Witness Whereof, the National Labor Relations Board has caused this, its Complaint and its Notice of Hearing, to be signed by the Regional

Director for the Twenty-first Region on the 23rd day of April, 1942.

[Seal]

WM. R. WALSH,

Regional Director, 21st Region,
National Labor Relations Board, 808 U. S. Post-
office & Courthouse Building,
Los Angeles, California

BOARD'S EXHIBIT No. 1-D

[Title of Board and Cause.]

AFFIDAVIT AS TO SERVICE

State of California,
County of Los Angeles—ss.

I, Marion Riemer, being duly sworn, depose and say that I am an employee of the National Labor Relations Board, in the 21st Region at Los Angeles, California, on the 23rd day of April, 1942, I served by postpaid registered mail, bearing Government frank a copy of

Complaint, Notice of Hearing, and First Amended Charge to the following named persons, addressed to them at the following addresses:

Register Publishing Co., Ltd.

Santa Ana, California

Santa Ana International Typographical Union No.
579,

837 North Garnsey Street

Santa Ana, California

Attention: J. W. Jones, Vice President
MARION RIEMER.

Subscribed and sworn to before me this 23rd day
of April, 1942.

(Illegible)

Notary Public in and for the County of Los An-
geles, State of California.

My Commission Expires Nov. 24, 1943.

BOARD'S EXHIBIT No. 1-F

United States of America Before the National
Labor Relations Board, Twenty-First Region

In the Matter of REGISTER PUBLISHING CO.,
LTD.,

and

SANTA ANA INTERNATIONAL TYPO-
GRAPHICAL UNION No. 579.

ANSWER

Comes Now Respondent, Register Publishing
Co., Ltd., a corporation, and answering the Com-
plaint on file herein admits, denies and alleges as
follows:

1. Answering Paragraph 1 of the Complaint, Respondent admits the allegations of the same.

2. Answering Paragraph 2 of the Complaint, Respondent admits the allegation that the Register Publishing Co., Ltd. is a newspaper published daily by Respondent at its plant in Santa Ana, California, but denies the allegation that it is published Sunday, the allegation that it is distributed throughout the state of California, and the allegation that a substantial portion of its daily circulation is sold and distributed outside the state of California. Respondent alleges that its total circulation as of April 30th, 1941, when the strike mentioned hereinafter was commenced, was 15,659, of which only 89 were circulated outside the county but inside the state, and only 51 were circulated outside the state, largely for accommodation.

3. Answering Paragraph 3 of the Complaint, Respondent admits that its news print and mats come from without the state but denies that it causes or has continually caused large quantities of raw materials used in its business, exclusive of news print or mats, to be transported to Respondent's place of business at Santa Ana either from other states of the United States or from foreign countries.

4. Answering Paragraph 4 of the Complaint, Respondent denies each and every allegation contained therein, except that it admits that it receives and publishes daily except Sunday certain feature services the material for certain of which is prepared and originates outside the state of California

and that Respondent, in the course and conduct of its business daily except Sunday publishes advertising originating outside the state of California.

5. Answering Paragraph 5 of the Complaint, Respondent admits the allegations of the same.

6. Answering Paragraph 6 of the Complaint, Respondent denies each and every allegation contained therein.

7. Answering Paragraph 7 of the Complaint, Respondent alleges that it lacks information sufficient to form a belief, and on that ground denies each and every allegation contained therein.

8. Answering Paragraph 8 of the Complaint, Respondent denies each and every allegation contained therein, except that it admits that a unit composed of all employees in the composing room of Respondent's plant would be a unit appropriate for the purposes of collective bargaining.

9. Answering Paragraph 9 of the Complaint, Respondent denies each and every allegation contained therein, except that it admits that prior to March 1st, 1940, and for a period thereafter extending not later than April 30th, 1941, a majority of the employees in Respondent's composing room did designate the Union as their representative for the purpose of collective bargaining with Respondent, and that up to and including April 30th, 1941, the Union was the exclusive representative of all employees in the said unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment.

10. Answering Paragraph 10 of the Complaint, Respondent denies each and every allegation contained therein.

11. Answering Paragraph 11 of the Complaint, Respondent denies each and every allegation contained therein.

12. Answering Paragraph 12 of the Complaint, Respondent denies each and every allegation contained therein, except that it admits that on the night of April 30th and on the morning of May 1st, 1941, certain of Respondent's employees in the composing room did go on strike and did picket Respondent's plant.

13. Answering Paragraph 13 of the Complaint, Respondent denies each and every allegation contained therein.

14. Answering Paragraph 14 of the Complaint, Respondent denies each and every allegation contained therein.

15. Answering Paragraph 15 of the Complaint, Respondent denies each and every allegation contained therein.

16. Answering Paragraph 16 of the Complaint, Respondent denies each and every allegation contained therein.

17. Answering Paragraph 17 of the Complaint, Respondent denies each and every allegation contained therein.

Wherefore: Respondent prays the Complaint on file herein be dismissed.

REGISTER PUBLISHING CO.,
LTD.,

Santa Ana, California.

By C. H. HOILES,

Secretary-Treasurer.

WILLIS SARGENT,

Attorney for Respondent.

State of California,
County of Orange—ss.

C. H. Hoiles, being by me first duly sworn, deposes and says:

That he is the Secretary-Treasurer of the Register Publishing Co., Ltd., The Respondent in the above entitled matter, and that he makes this verification for and on behalf of said Register Publishing Co., Ltd., that he has read the foregoing Answer and knows the contents thereof and that the same is true of his own knowledge, except as to the matters which are therein stated to be without the knowledge of Respondent, and as to those that he believes it to be true.

C. H. HOILES.

Subscribed and Sworn to before me this 5 day of May, 1942.

[Seal]

BLANCHE P. GILBERT,

Notary Public in and for the County of Orange,
State of California.

[Title of Board and Cause.]

Mr. Charles M. Ryan,
For the Board.

Mr. Willis Sargent and Mr. Paul Hart, of Los Angeles,
For the respondent.

Mr. Seth R. Brown of Los Angeles,
For the Union.

INTERMEDIATE REPORT

Statement of the Case

Upon an amended charge filed March 27, 1942, by Santa Ana International Typographical Union No. 579, affiliated with the International Typographical Union, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twenty-first Region (Los Angeles, California), issued its complaint dated April 23, 1942, against Register Publishing Co., Ltd., herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint accompanied by notice of hearing were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent (1) on or about March 1, 1940, and at all times

thereafter, refused to bargain collectively with the Union, although at all such times it was the exclusive representative of all the employees in the composing room of respondent's Santa Ana plant, a unit appropriate for the purposes of collective bargaining; (2) since March 1, 1940 has indicated its hostility to the Union and thereby has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed under the Act; (3) since July 29, 1941, has refused to reinstate 20 named employees,¹ who had gone out on strike on May 1, 1941, because of the unfair labor practices described above, despite their application for reinstatement.

The respondent's answer filed May 6, 1942, denied the jurisdiction of the Board and denied the commission of any unfair labor practices.

Pursuant to notice, a hearing was held in Santa Ana, California, on May 7, 8, and 11, 1942, before Will Maslow, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and the Union by a representative; all participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the close of the Board's case, and again at the close of the hearing, the respondent moved to

1) On the Board's motion and without objection, two names were stricken from the complaint by the Trial Examiner.

dismiss the complaint because of lack of jurisdiction and also on the merits because of lack of proof. These motions were denied.²

At the close of the hearing, both the attorney for the Board and the respondent moved to conform the pleadings to the evidence adduced. These motions were granted. At the close of the hearing, the attorneys for the Board and the respondent argued orally before the undersigned. A brief was also submitted by the respondent.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. The business of the respondent

The respondent is a California corporation which publishes a newspaper, known as the Santa Ana Register, herein called the Register, daily except Sundays, in Santa Ana, California. In 1940, there were 15,032 subscribers to the Register, of whom 59 were located outside the State of California. In 1940 all of the newsprint used by the respondent, amounting to 1,431,000 pounds, was purchased by it for \$34,636 and shipped to Santa Ana from Canada. That same year miscellaneous materials and equipment in the sum of \$7,000 were likewise shipped from points outside the State of California to its plant in Santa Ana.

The respondent subscribes to the news services

(2) The official reporter inadvertently omitted the second denial of these motions. In any event they are hereby denied.

of the Associated Press, the United Press, and the International News Service; the greater part of the news of these services is gathered out of the State of California by the services and transmitted to the Register. Such news constitutes about 12% of the total news appearing in the Register. In addition, the Register publishes a miscellany of special features; about 90% of these features is furnished to it by feature services located outside of the State of California. These features constitute about 8% of the total reading material of the Register.

About 6% of the total revenue of the respondent is derived from national advertisers located outside the State of California. This advertising is transmitted to the Register by agencies likewise located outside the State of California. The respondent's total annual gross revenue is more than \$300,000, two-thirds of which comes from its advertising and the remainder from its subscribers.

There has been no substantial change since 1940 in the operations of the respondent described above, except for a decline in national advertising.³

The strike of April 30, 1941, hereinafter described, resulted in no substantial interference with the operations described above, except that the May 1, 1941 issue of the Register was prepared by

(3) The above description of the respondent's operations is based on the undisputed testimony of C. H. Hoiles, the secretary-treasurer of the respondent.

a make-shift staff and was less than the usual size.⁴

The respondent employs from 80 to 85 persons, about 22 of whom worked in April 1941, as printers in its composing room.

II. The organization involved

Santa Ana International Typographical Union No. 579, affiliated with the International Typographical Union formerly affiliated with the American Federation of Labor but now unaffiliated, is a labor organization of which all of the employees in the respondent's composing room were members on April 30, 1941.

III. The unfair labor practices

A. Background

The Register has been published in Santa Ana since at least 1909. From 1909 to about 1928 it was owned by one Baumgartner. In 1928 it was acquired by the respondent, the then chief stockholder being J. F. Burke. In 1935 the Hoiles family, the present stockholders and publishers, purchased the stock of the respondent and have held it ever since.

(4) In *N.L.R.B. v. Rath Packing Co.*, 115 F. (2d) (C.C.A. 8) the court held: "... the Board's jurisdiction is not limited to cases in which actual obstruction of commerce through labor disputes, strikes or lockouts has materialized." In *N.L.R.B. v. Levaur, Inc.*, 115 F. (2d) 105 (C.C.A. 1) the court held:

"Thus, the respondent's contention that the failure of the strike to affect interstate commerce prevents attachment of the Board's jurisdiction must be rejected."

From 1909 to 1935 the working conditions of the printers in the composing room were governed by an oral contract between the Union and the various owners of the Register. From 1935 to 1937 while the Hoiles family was in control, the terms of the prior oral contract were observed by the Hoiles although the oral contract was not formally renewed.

In 1937 the Union met with the publishers of the Register, the publishers of a competing newspaper, known as the Santa Ana Journal, and the owners of the commercial job printing shops in Santa Ana and negotiated a new agreement. The commercial job printers signed the agreement, but the publishers of the Register and the Santa Ana Journal refused to do so. The terms of the oral agreement with the Register were, however, reduced to writing. The 1937 contract increased the wage rate from the existing rate of 87½ cents an hour to 92 cents and provided for an additional increase to \$1 during the life of the contract.

In 1939, at the expiration of the oral agreement, the respondent met with the Union and negotiated a renewal for the term of one year. The Union again asked the respondent to sign the agreement, but again the respondent refused. The 1939 agreement, which was likewise reduced to writing, provided for a closed shop, limited the number of apprentices the respondent could employ to three and regulated the type of work to be done by the apprentices. The wage scale was fixed at \$1 an hour for a work week of five days of 7½ hours each. Time

and a half was required for work after 7½ hours each day, although the respondent was given the option of lengthening the work week to five days of 8 hours each without any overtime on giving the Union two weeks notice.

The contract also incorporated the by-laws of the International Typographical Union in relation to the control of apprentices and certain other matters. It expired on March 1, 1940.

The 1939 contract was substantially similar in its closed shop and apprenticeship clauses to the other oral agreements extending back to 1909.

B. The refusal to bargain with the Union

1. The appropriate unit

The complaint alleges, and the respondent's answer admits, that all the employees in the composing room of the respondent's Santa Ana plant constitute a unit appropriate for the purposes of collective bargaining. The undersigned finds that all the employees in the composing room of the respondent's Santa Ana plant have at all times material herein and do now constitute an appropriate unit and further finds said unit will ensure to the employees of the respondent the full benefit of their rights to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

2. Representation of a majority in
the appropriate unit

The complaint alleges that prior to March 1, 1940, and at all times thereafter a majority of the em-

ployees in the respondent's composing room did designate the Union as their representative for the purposes of collective bargaining with respondent and therefore the Union has been since March 1, 1940, and is now, the exclusive representative of all said employees for the purposes of collective bargaining. The respondent's answer admits that up to April 30, 1941, the Union was such exclusive representative.

On the night of April 30, 1941, the employees of the respondent ceased work concertedly and went on strike. The strike has continued ever since.

The undersigned finds that on March 1, 1940, and at all times thereafter,⁵ the Union was and is the duly designated representative of a majority of employees in the above-described appropriate unit and pursuant to Section 9 (a) of the Act, the Union was at all times material herein and is now the exclusive representative of all of the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. The negotiations in 1940⁶

In March 1940, on the expiration of the 1939 contract, the Union submitted its proposals for a

(5) Matter of A. Sartorius & Co., Inc., etc., 40 N.L.R.B., No. 20, 10 L.R.R. 358. The strike, as is hereinafter found, was caused by the respondent's unfair labor practices.

(6) The testimony of the Union representatives as to the negotiations both in 1940 and 1941 was substantially uncontradicted.

new contract, requesting a wage rate of \$1.15 an hour and one week's vacation with pay. The existing contract provided for \$1. an hour and contained no provisions for vacations. Early in March, C. H. Hoiles, the secretary-treasurer of the respondent and a son of R. C. Hoiles, president of the respondent, met with the Union's representative and rejected the proposals, stating that since the respondent paid overtime to its printers, it was opposed as a matter of principle to granting vacations with pay. The respondent also stated it would not increase the hourly rate. The Union then asked the respondent to submit its own offers which Hoiles did shortly thereafter.

That month the respondent proposed that there be no discrimination between Union and non-union members in its plant, which, as C. H. Hoiles testified, meant it wished to abolish the closed shop provisions of the contract. It further asked for full control of apprentices, eliminating all restrictions as to the number of apprentices it could hire and the type of work they could do during their apprenticeship. It also proposed that the work week be increased to 40 hours, consisting of 5 days of 7 hours each and one of 5. Finally, C. H. Hoiles requested several minor adjustments.

Each of the points set forth in the respondent's demands meant a worsening of the then existing conditions of employees, then numbering 22 printers and three apprentices.

Upon the receipt of these proposals, the Union requested the assistance of Seth R. Brown, a rep-

representative of the International Typographical Union, [herein called the ITU] and formerly its first vice president, who came to Santa Ana to conduct the negotiations with the respondent.

Brown met with C. H. Hoiles on March 20, 1940, and discussed the respondent's proposals. Hoiles stated that the respondent wished to have full control of the work done by the apprentices during their six-year apprenticeship and specifically that apprentices should be allowed to work on the linotype machines prior to the last year of their apprenticeship. Brown in reply quoted from the by-laws of the ITU which he contended forbade the inclusion of such provisions in the contract of a subordinate local.

On March 27, 1940, the parties met again and continued their discussions.

On April 15, 1940, Brown and George Duke, vice president of the Union, met with C. H. Hoiles. Brown offered to submit to the Union for ratification a proposal that the wage rate be increased to \$1.06 an hour, a drop from the original proposal of \$1.15, but Hoiles immediately rejected this offer. Brown then suggested all matters in dispute be arbitrated, including the question of wages. This too was refused by Hoiles.⁷ Duke then stated that if

(7) At the hearing it was shown that the by-laws of the ITU forbade any arbitration of the "general laws" of the ITU, which included provisions relating to apprentices. The respondent did not contend, however, that it knew of this prohibition at the time or that it was the reason for its refusal to submit the dispute to arbitration.

an agreement were reached, the Union wished it reduced to writing and signed. Hoiles replied that he would not consider signing a contract, that his word was good, and that the Union did not need to fear that he would violate an oral agreement.

Brown then requested the respondent to submit new offers and the meeting adjourned.

On May 3, Brown and C. H. Hoiles met again. Brown proposed a graduated wage scale and graduated provisions for vacations with pay, as follows:

\$1.03 an hour to September 1, 1940.

1.04 an hour from September 1, 1940, to March 1, 1941.

1.05 an hour from March 1, 1941, to September 1, 1941.

1.06 an hour from September 1, 1941, to March 1, 1942.

1.08 an hour from March 1, 1942, to March 1, 1943.

2 days vacation with pay in 1940.

3 days vacation with pay in 1941.

5 days vacation with pay in 1942.

5 days vacation with pay in 1943.

C. H. Hoiles agreed to take the modified proposals under advisement. This was the second time the Union had lowered its original demands.

On May 16, 1940, the parties met again and C. H. Hoiles rejected the Union's modified proposals stating that he could not grant a wage increase no matter how small, because his other employees would then ask for a similar increase. The Union again asked for counter-proposals but Hoiles said he had none.

The Union met that night and decided to hold in abeyance the entire negotiations with respondent. No further conferences with the respondent were held until April, 1941. The terms of the oral agreement were observed, however, until May 1, 1941.

4. The negotiations in 1941

In March 1941, the Union negotiated a series of contracts with the commercial job printers in Santa Ana and with three weekly newspapers in the vicinity.⁸ These contracts raised the hourly wage rate for printers from \$1 an hour to \$1.07 up to October 1, 1941, and to \$1.12 from October 1, 1941, to October 1, 1942.

Early in April 1941, at the Union's request, C. H. Hoiles met again with the Union's representatives. Brown notified Hoiles of the contracts signed by the job printers and weekly newspapers and contending that the wage scale set forth in these contracts was now the prevailing wage rate in the county, asked Hoiles to meet that wage scale. Hoiles replied that while it would not embarrass the respondent financially to increase its printers' wages, it could not grant the increase, because other employees in other departments would expect like treatment.⁹ Hoiles then proposed that the work week be increased from 37½ hours to 40 hours a

(8) The Journal, competitor of the Register, had ceased publication around November 1938.

(9) The respondent had no other union members among its employees except two stereotypers and two pressmen.

week, which necessitated the elimination of the overtime rate for the extra $2\frac{1}{2}$ hours. The Union's representative rejected this proposal, but offered to submit it directly to the Union's membership.¹⁰ The Union again requested that an agreement, if reached, be signed and Hoiles again refused. The apprenticeship question was also discussed and the parties renewed the contentions expressed in the 1940 conferences.¹¹

On April 18, 1941, the parties met again and the Union notified C. H. Hoiles that its members had rejected the proposed increase of the work week to 40 hours at straight time pay. After some further discussion on wages, the Union asked the respondent for a new offer, but Hoiles declined to submit any. Brown then asked Hoiles to fix the date for another meeting. Hoiles replied, that they could meet again but it would not do any good; that they could talk about the war or the weather, but there would not be any increase in wages.

A meeting was nevertheless, scheduled for April 26. On that day as Brown awaited C. H. Hoiles at the respondent's plant, Brown was notified that the Union would receive a written statement of the respondent's position.

(10) The Union at that time consisted of about 40 employees, about half of whom were employed by the respondent. It had several members who were unemployed.

(11) The respondent never withdrew the demands first made in March 1940.

On April 29, 1941, Brown received a letter from the respondent dated April 26 which read:

In accordance with our recent negotiations, the Board of Directors of the Register Publishing Co., Ltd., have authorized me to place this proposition before you in writing.

Namely, we are willing to allow our printers to work forty (40) hours a week, instead of 37½, at the same rate they are now getting of \$1 an hour. This will give them a weekly increase of \$2.50, or approximately \$130 a year.

Also, we are to have complete control of the number and work of our apprentices, as we see fit for efficient operation of our plant.

Hoping this meets with your approval, we are,

Very truly yours,

REGISTER PUBLISHING
CO., LTD.

(s) C. H. HOILES

Secretary-Treasurer

Following the receipt of C. H. Hoiles' letter, Brown met individually with Hoiles on the afternoon of April 30, 1941, and urged him to withdraw the respondent's proposition on apprentices and to confer further with the Union. Brown told Hoiles that if he did so there was a chance of settling the controversy. Hoiles replied that there would be no deviation from the terms set forth in the respondent's letter of April 26. Brown then told Hoiles the Union could not adopt the respondent's

proposal on apprentices, because it violated the general laws of the ITU.

That night the Union met and, after a report by Brown on the negotiations with the respondent, voted to go out on strike. Among the matters discussed by the Union prior to the vote were the respondent's refusal to sign an agreement, the apprentice question, and the respondent's proposal that there be no discrimination between union and non-union men.

Duke met C. H. Hoiles directly after the meeting and told him of the Union's decision. When Hoiles told Duke that the respondent had not wished the strike, Duke replied: "We feel that you have wanted it, both you and your father."

The strike began on the evening of April 30, 1941. All the printers walked out on strike that night and the next morning, except the foreman of the composing room.

5. The Clovis News-Journal

R. C. and C. H. Hoiles together own a 90 per cent interest in a newspaper called the Clovis News-Journal published in Clovis, New Mexico. On July 25, 1939, the Board issued a decision¹² in which it

(12) In the Matter of R. C. Hoiles, C. H. Hoiles, Harry Hoiles and Mary Jane Hoiles, Doing Business Under the Trade Name and Style of Clovis News-Journal and Pryer C. Smith, 13 N.L.R.B. 1123. A petition for enforcement of the Board's order in this case was filed in the United States Circuit Court of Appeals for the Tenth Circuit; the Court, on August 5, 1940, granted a motion of the Board to dismiss the proceeding without prejudice.

found that the publishers of the Clovis News-Journal, by their refusal to put in writing an agreement they had reached on February 6, 1939, with Local 985 of the ITU, had interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

On November 30, 1940, however, Local 985 of the ITU and the publishers signed a one-year agreement providing for a closed shop. C. H. Hoiles is general manager of the Clovis News-Journal and owns a 45 percent interest in the paper. All problems concerning its labor relations are first submitted to him before action is taken.

6. R. C. Hoiles' views on unionism

On January 15, 1941, Duke and R. C. Hoiles engaged in a discussion on trade unions, similar to discussions between the two held in the past. Duke asked: "If you do not like union labor in your employ, why don't you discharge all of us and employ non-union labor." Duke testified and the undersigned finds that R. C. Hoiles replied: "Oh, the Wagner Act and its provisions would force me to reinstate all of them and give them back pay too."¹³

A series of 5 columns written by R. C. Hoiles which had been published in 1940 and 1941 in the Register under his signature was introduced in evidence at the hearing. These columns were offered

(13) R. C. Hoiles did not testify, although present at the hearing.

and received not to show that the views expressed therein were in themselves a violation of the Act, but solely to illustrate the opinions of R. C. Hoiles and thus to furnish a background against which the respondent's contentions in the negotiating conferences could be interpreted and evaluated.¹⁴

In the May 31, 1940, issue of the Register there appeared a column entitled: "Printers Union Idea of Apprentices." R. C. Hoiles wrote in that column that "the apprentice must be the serf of the union printers" and that "The only difference between the printers' idea of controlling apprentices and Hitler or Stalin, is a matter of degree."

In another column published the same day he wrote:

Anyone who has had experience in reading union contracts, recognizes the similarity between the German terms of peace to France and a union contract.

* * *

(14) The undersigned rejects the contention of the respondent that there was no connection between these views and the position taken in the collective bargaining conferences by C. H. Hoiles. Not only is R. C. Hoiles president of the respondent and one of its directors, but he is also the father of C. H. Hoiles. Together they own about half of the stock of the respondent and are the co-publishers of the Register. The remaining shares are owned by the wife, son, and daughter-in-law of R. C. Hoiles, and by Earl J. Hanna, not a member of the family. The letter of the respondent dated April 26, 1941, referred to above, was written after a meeting of the directors of the respondent, attended only by R. C. and C. H. Hoiles and their wives.

The result of union contracts in America that takes away the initiative of workers and robs those excluded from having the right to receive the fruits of their labor, if carried on to its final culmination, will result in as much tyranny in America as exists now and will exist in France.

On January 22, 1941, one week after the discussion with George Duke, above described, R. C. Hoiles wrote in his column:

The contributor asks why the Register employs union labor in its printing shop. The answer is that union labor and the Wagner law have discriminated against those who do not believe in the closed shop from having the right to learn a trade, and after they do permit them to become apprentices they control the way they are to learn the trade. For this reason printers who believe in open shop are very scarce.

On May 17, 1941, after the strike, R. C. Hoiles in a column entitled "Labor Unionists and Self Respect" wrote:

Of course, the material loss due to labor unions causes untold misery, suffering and poverty, but the most serious part and the primary cause of all this loss, is the degradation of the character of the men under labor union control. They have had their souls conscripted, their personalities drafted by the racketeers at the head of the unions.

On May 22, 1941, R. C. Hoiles wrote:

The contention of labor unionists that collective bargaining and labor union tactics raise wage levels is just as rational as it would be for a bank robber to contend that bank robbery raises the standard of living of people.¹⁵

C. The refusal to reinstate the striking employees; interference, restraint, and coercion.

After C. H. Hoiles' conversation with Duke on the night of April 30, 1941, Hoiles called William Bray into his office, then employed on the night shift. Hoiles requested Bray to come to work the next day and promises him his regular wages plus \$1.50 an hour for overtime work. Bray suggested that the respondent might change his mind and sign a contract with the Union in 2 or 3 days, in which event Bray would incur the Union's displeasure. Hoiles replied, according to Bray, and the undersigned finds: "We will not sign up in two or three days and we will never sign with the Union."

(15) These views of R. C. Hoiles would, of course, be of no materiality or consequence in the absence of unfair labor practices on the part of the respondent. In determining, however, whether the acts alleged to have been performed by the respondent are unfair practices or not, his views serve to interpret equivocal conduct and to furnish a motive, if not an explanation, for the respondent's entire course of conduct. Cf. *Matter of Prettyman*, etc., 12 N.L.R.B. 640, 646, set aside on question on venue without prejudice, *N.L.R.B. v. Prettyman*, 117 F. (2d) 786 (C.C.A. 6), where a booklet on labor relations written by a publisher was similarly considered.

Bray then explained that he would be fined \$1,000 by the Union if he were to work during the strike. Hoiles offered to take care of any union fine imposed on Bray, but the latter rejected the offer.

On May 1, 1941, R. C. Hoiles, president of the respondent, visited Bray's home and spoke to the latter's wife. Hoiles requested Mrs. Bray to use her influence to get her husband to go back to work. When Mrs. Bray referred to the possibility of a \$1,000 union fine if her husband did so, R. C. Hoiles offered to post \$1,000 in a bank in escrow to provide for that contingency, and in addition offered to furnish all the money she needed for her immediate use. Mrs. Bray refused. During the conversation, R. C. Hoiles stated that he did not believe in unions and that his self-respect prevented him from taking back the union men.

On May 2 or 3, Duke met C. H. Hoiles, told him the Union was still willing to negotiate with the respondent. Hoiles replied that any time any of the strikers wanted to return to work, he would be considered individually.

On Sunday afternoon, May 4, 1941, R. C. Hoiles visited Bray at his home once more and offered him \$40 a week if he returned to work. Bray refused. During the conversation, R. C. Hoiles stated that he had had trouble with the ITU before, which cost him \$80,000 and that he would never have anything to do with it.

On May 5, 1941, Clarence Liles, a business agent of the Allied Printing Trades called on C. H. Hoiles and advised him that the stereotypers em-

ployed by the respondent would not pass through the picket line which had been established by the Union.¹⁶ Liles told Hoiles that if the picket line were removed or the printers came back to work, the stereotypers would return to work. Hoiles replied that, so far as the ITU was concerned, they would never come back.¹⁷

On May 5, one striking printer returned to work and by May 6, 1941, all of the striking printers had been replaced by new employees.

In May 1941, a conciliator of the United States Department of Labor conferred separately with the Union and the respondent and urged both sides to submit the dispute to arbitration. The Union agreed but the respondent refused.

Around July 25, 1941 the Union wrote the following letter to C. H. Hoiles:

At a meeting of Santa Ana Typographical Union #579, held on Friday, July 25, the following action was taken by unanimous vote:

The union requests a meeting with the Santa Register Publishing Company for the purpose of renewing negotiations and reaching an

(16) The stereotypers have not yet returned to work and have been replaced.

(17) Edward Saleh, a stereotyper present at the conference, testified that Hoiles replied: "So far as the Typographical was concerned, they wouldn't be back to work." C. H. Hoiles testified that what he had said at the conference was: "What if they never come?" The undersigned, however, credits the Liles-Saleh version, particularly as they had little interest in the outcome of this proceeding.

agreement for the reinstatement of the former union employes of the The Santa Daily Register.

Yours truly,

SANTA ANA TYPO-
GRAPHICAL UNION
#579

(s) J. W. JONES

President

(s) O. E. FISHER

Secretary.

On August 2, 1941, the respondent replied as follows:

We acknowledge receipt of your letter of recent date which advises us of the action of your Union as of July 25th last.

The Santa Ana Register has never refused to negotiate with you and will not refuse to negotiate with you now. Before sitting down with you, however, we should point out that since your members went out on strike on May 1st last, nearly three months ago, it has been necessary for us to employ others to take the places of those who went out on strike.

These new employees have now become a part of the establishment and we do not feel, in fairness to them, that we can replace them now. Furthermore, shortly after your members went out on strike, we offered, through your Mr. Duke then local President, to take back any of your members who were out on strike.

whom we believed could be utilized if they returned to The Register because of vacancies we had at that time. These men did not return, however, and it was necessary to fill the vacancies by employing others who are now a part of our staff.

On behalf of the Management I also feel it necessary to indicate to you that there has been no change in our situation since the Union and the Management found it impossible to get together on the questions of increased wages and apprentices.

If you wish to sit down with us, in view of what I have written, the Management will certainly not refuse to confer with you. We think it only fair, however, that before doing so you should be given our attitude, as outlined above.

Sincerely,

REGISTER PUBLISHING
CO., LTD.

By (s) C. H. HOILES

There was no further communication or conference between the respondent and the Union. None of the eighteen strikers listed in Appendix A of the Intermediate Report has been reinstated.

D. Concluding findings

1. The refusal to sign a contract

Throughout the negotiations, the Union did not withdraw its demand for a signed contract nor did the respondent recede from its position that its word was good enough.

It is, however, well settled that an employer's refusal to reduce to writing and sign an agreement he has reached with a labor organization is a conclusive demonstration of his failure to bargain in good faith and a violation of Section 8 (5) of the Act.¹⁸ And, as was held in *N.L.R.B. v. The Blanton Co.*, 121 F. (2d) 564 (C.C.A. 8): "Equally so, is such an intention, which is announced or has been determined upon before negotiations are commenced."

It is immaterial that when the Union requested a signed contract the parties had not yet reached an understanding as to what would be included in the contract. Nor is it material that despite the respondent's stand in opposition to a signed contract, the Union continued discussing with it the proposed terms of such a contract.¹⁹ Nor is it an answer to this "well-nigh inescapable inference"²⁰ of bad faith in refusing to sign an agreement, that the respondent would probably have reduced any agreement reached to writing.²¹ The obligation that an employer sign an agreement is based not only upon the practical necessity that without a permanent memorial of negotiations they "are exposed to

(18) *Heinz Co. v. N.L.R.B.*, 311 U. S. 514.

(19) *Matter of Montgomery Ward & Company, etc.*, 37 N.L.R.B. 100, 120.

(20) *Fort Wayne Corrugated Paper Co. v. N.L.R.B.*, 111 F. (2d) 869 (C.C.A. 7).

(21) *Matter of Chesapeake Shoe Mfg. Co., etc.*, 12 N.L.R.B. 832, 838.

the sport of fugitive and biased recollection.”²² The Union was entitled to a legally enforceable agreement, not a mere memorandum which would have to run the gauntlet of the risks of authentication and the Statute of Frauds in a court action. The respondent’s freedom to contract did not include “the opportunity to put in jeopardy”²³ the fruits of the Union’s negotiations.

The respondent was not protecting a real or legitimate interest in this refusal to sign an agreement, but was rather demonstrating its captiousness, particularly in view of the antagonism demonstrated by R. C. Hoiles in his editorial attacks against the Union.

That this refusal was not a matter of principle is indicated by the fact that R. C. and C. H. Hoiles in November, 1940 agreed to a signed contract for the Clovis News-Journal. Despite this, however, in April 1941, C. H. Hoiles still refused to sign a contract insisting that his “word” was good enough. This refusal demonstrates that the respondent was not bargaining in good faith.

2. The proposal for an open shop

The conclusion that the respondent was bargaining in bad faith by reason of its refusal to sign a contract with the Union is buttressed by the counter-proposals submitted by the respondent. In March 1940 the respondent, in reply to the Union’s

(22) *Art Metal Construction Co. v. N.L.R.B.*, 110 F. (2d) 148 (C.C.A. 2).

(23) *Ibid.*

request for a wage increase, proposed, among other things, that it be given full control of the apprenticeship system and that in the future there be no discrimination between union and non-union men.²⁴ These two proposals, whatever their merits in the initial negotiations between a publisher and his printers looking toward the establishment of contractual relations, take on a different aspect because of the long-continuing relationship between the Union and the respondent.

Members of the Union had been working on the Register for its various owners since 1909. Since 1928 the respondent and the Union had observed the terms of an oral agreement. Since 1937 the present stockholders of the respondent had been operating the composing room under such an agreement. During all these years the oral agreements provided that all printers employed on the Register were required to be members of the Union.

The respondent did not contend that a closed shop provision would compel it to coerce its employees to join the Union (nor could it, since all were then members); it did not contend that a closed shop provision would prevent or impair the hiring of qualified printers; it did not contend that such a provision would prevent printers from leaving the Union (there was no indication that any

(24) The Union interpreted this latter demand as meaning the elimination of the closed-shop provision of its oral contract; the respondent gave no further or different explanation. The undersigned accepts the Union's interpretation as reasonable and as the one intended by the respondent.

one wished to leave the Union). The respondent, without attempting to justify its position, merely insisted on no discrimination between union and non-union men. No reason at all was advanced by the respondent for this demand in an industry, where, as the undersigned takes judicial notice, the closed shop has been characteristic for many years.²⁵

Nor was this demand of the respondent a mere tactical or bargaining move in its negotiations with the Union. The respondent had, through its president, publicly expressed its hostility to the closed-shop principle and had candidly stated that only the Act prevented the discharge of all of its union printers and their replacement by non-union men. The proposal made by the respondent therefore represented a real threat to the Union's security and to the jobs held by its members.

While the closed-shop provision in a contract is customarily the subject of negotiation, and the failure to accept a closed-shop demand of a union is ordinarily not in itself a sign of bad faith,²⁶ the

(25) Cf. *Monthly Labor Review*, October 1939, page 831, published by the Bureau of Labor Statistics; see also *Governmental Protection of Labor's Right to Organize*, National Labor Relations Board, Division of Economic Research, Bulletin No. 1, August, 1936, page 19, incorporated in *Matter of Crucible Steel Company of America, etc.*, 2 N.L.R.B. 298.

(26) *Matter of Montgomery Ward & Co., Incorporated, etc.*, 39 N.L.R.B., No. 41, 10 L.R.R. 121; *Matter of Sam M. Jackson, etc.*, 34 N.L.R.B., No. 30.

insistence by the respondent upon an open shop in these circumstances, without a showing of its necessity, raised a further doubt as to the respondent's good faith.

3. The proposal for full control of apprentices

The respondent's insistence upon complete control of the apprentices, both as to their number and the type of work performed by them, was on a par with its demand for an open shop. The oral contracts in effect since 1909 and which the present management of the respondent had been observing since 1937 provided in detail for the control of apprentices. Thus, the number of apprentices that could be hired was limited, the type of work they could do was regulated, and the length of the apprenticeship fixed.

The so-called "general laws" of the ITU which are adopted by its annual conventions regulate the apprentice system in great detail. The general laws of the ITU require that contracts of subordinate locals incorporate a section containing the necessary requirements of these laws with respect to apprentices. These laws were, by incorporation, made a part of the oral agreements between the Union and the respondent. The respondent's demand for complete control of apprentices represented a demand therefor that the Union was unable to comply with even if it wished to. ²⁷

(27) Knowledge of these laws of the ITU must be imputed to the respondent, for they were part of the oral contract to which it was a party for more than three years.

The respondent, whatever legitimate grievances it had against the apprentice system, was making a demand far broader in scope than required by its own needs. Its oral agreement with the Union limited its apprentices to three, as compared with 22 journeymen, or full-fledged employees. The laws of the ITU, however, provided that the maximum number of apprentices a publisher employing 22 journeymen was entitled to was 5. The respondent, therefore, if it felt the need of more apprentices could in its letter of April 26, 1941, have asked the Union to allow it two more. Instead it asked for complete control without any restrictions.

The apprentice system was firmly embedded in the ITU's relationships with employers and has been so for many decades. Seth Brown, formerly a first vice-president of the ITU, testified that in his long experience with the ITU he had seen numerous contracts with employers, but had never seen one which gave an employer full control of the apprentice system. While, of course, the experience of other employers was not binding upon the respondent, yet such experience may be considered in evaluating the reasonableness of the respondent's proposal.²⁸

The apprentice system was of importance to the Union. Allowing an employer full control of apprentices meant the dilution of the journeymen printers

(28) Similarly, at common law to determine whether an individual has acted negligently, the ordinary standards of other reasonable individuals under like circumstances, are considered, Restatement, Negligence, Sec. 282.

craft and the gradual replacement of journeymen earning \$1 an hour by less skilled apprentices earning much less than that sum. That such a possibility was not remote is apparent from the published views of the respondent's president attacking unions in general and the apprentice system in particular.

The respondent's sweeping demand as to apprentices throws further doubt on its good faith in the negotiations with the Union, and indicates it was seeking a break with the Union, rather than a continuance of contractual relationships.

4. The respondent's position on the wage issue

The respondent's position on the wage question, coupled with its contentions on the signed contract, closed shop, and apprentice issues, throws further doubt on its good faith. The Union's first proposal of \$1.15 an hour made in March 1940 was on its own initiative modified three times, yet on each occasion the respondent rejected the request and, although solicited, made no counter-offer on wages.²⁹

The respondent did not even contend in 1941 that it could not afford the proposed wage increase. It admitted that the increase would not have embarrassed it financially, but argued that granting the printers an increase would have required it to grant

(29) The respondent's proposal that the work week be increased to 40 hours, far from being an effort to meet the Union part of the way, represented a limitation on overtime and a worsening of existing conditions.

similar increases to the other unorganized employees.³⁰

The 22 members of the Union employed by the respondent were not, however, required to wait for a wage increase, which the respondent admitted it could grant, until the respondent was able or willing to increase the wages of its remaining 60 odd unorganized employees. Acceptance of the respondent's contention on this point would necessarily mean that an organized unit of an employer's staff could not hope for a wage increase until the entire plant as a whole received one, regardless of the individual merits of the needs of each particular craft or group.

5. The refusal to bargain during the strike

The respondent's offer on August 2, 1941, to meet further with the Union does not indicate a willingness to bargain collectively in good faith, since the crucial issue of reinstating the strikers,³ was arbitrarily excluded by the respondent from the matters to be discussed. Bargaining about wages and hours would have been a meaningless task, if the strikers for whose benefit the Union sought to bargain were deprived of the fruits of the negotiations. Such "bargaining" would yield little comfort to the striking employees. The strikers were entitled to reinstatement on their request alone, as is hereinafter

(30) The respondent offered no evidence that it would have to give these employees a wage increase if the printers received one, other than the assertion of C. H. Hoiles.

(31) The strike, as is hereinafter found, was caused by the respondent's unfair labor practices.

found, without any negotiation. To refuse even to negotiate on this subject is therefore not a willingness to bargain collectively.

6. Conclusions as to the bargaining negotiations

Viewing the negotiations in their totality, the respondent's announcement that it would not sign any agreement it might reach with the Union; its demand for no discrimination between union and non-union men; its insistence upon full control of the apprentice system; its failure during two years of negotiations to meet the Union even part of the way on the wage issue, or even to suggest a solution, even though a wage increase would not have embarrassed it financially, and finally its refusal to negotiate fully on all issues during the strike, convince the undersigned and he so finds, that the respondent on April 29, 1941, and at all times thereafter refused to bargain collectively with the Union as the exclusive representative of the employees in an appropriate unit, and thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. ³²

The undersigned further finds that the strike of April 30, 1941, was caused and prolonged by the above-described refusal to bargain in good faith.

(32) After the strike began, the Federal conciliator proposed arbitration. While the duty to bargain collectively with a union does not ordinarily entail the obligation to submit to arbitration any matters in dispute, the respondent's refusal and the Union's willingness to arbitrate do indicate in some measure each party's views as to the reasonableness of its position and the likelihood that an impartial third party would agree with these views.

7. The refusal to reinstate the strikers

Since, as has been found, the strike of April 30, 1941, was caused by the respondent's unfair labor practices, the strikers were entitled to reinstatement thereafter on their application, even though by that time their places had already been filled by employees hired after the commission of the respondent's unfair labor practice.³³ The mere fact that the respondent was willing to meet with the Union following the receipt of its request for reinstatement is of no avail to the respondent, since it clearly indicated that it was futile to discuss reinstatement. Its statement: "These new employees have now become a part of the establishment and we do not feel, in fairness to them, that we can replace them now," converted its offer to negotiate into a mere mockery.

In view of the respondent's indication that the strikers' places had been permanently filled by new employees, they were under no obligation to make an additional request for reinstatement which would have been a "useless gesture."³⁴

By the respondent's refusal on August 2, 1941,

(33) *Black Diamond S. S. Corp. v. N.L.R.B.*, 94 F. (2d) 875 (C.C.A. 2); it is immaterial that the strikers did not individually apply for reinstatement in view of the general application made in their behalf by the Union. *Matter of Rapid Roller Co. etc.*; 33 N.L.R.B. No. 108, *aff'd* *Rapid Roller Co. v. N.L.R.B.*, 9 L.R.R. 654 (C.C.A. 7).

(34) *Matter of Eagle-Picher Mining & Smelting Co., etc.*, 16 N.L.R.B. 727, modified and enforced, *Eagle-Picher Mining & Smelting Co. v. N.L.R.B.* 119 F. (2d) 903 (C.C.A. 8).

and thereafter, to reinstate its striking employees, the respondent discriminated in regard to the hire and tenure of said employees, thereby discouraging membership in the Union and thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

8. The effort to induce Bray to abandon the strike.

The efforts made by both C. H. and R. C. Hoiles to induce William Bray to cease his concerted strike activity and to desert the Union interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.³⁵

IV. The effect of the unfair labor practices upon commerce.

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening

(35) In addition, by "undercutting" in this manner the authority of the Union the respondent thereby violated its obligation to deal with the Union as the exclusive representative of all the employees in the composing room, including Bray. Such conduct also reflects on its good faith in the bargaining negotiations. *Ritzwoller Co. v. N.L.R.B.*, 114 F. (2d) 432 (C.C.A. 7); *N.L.R.B. v. Lightner Publishing Corp.* 113 F. (2d) 621 (C.C.A. 7); *Matter of Montgomery Ward & Co., etc.*, 37 N.L.R.B. 100, 124.

and obstructing commerce and the free flow of commerce. ³⁶

V. The remedy

Since it has been found that the respondent has engaged in certain unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the respondent has refused to bargain collectively with the Union as the representative of a majority of the employees in an appropriate unit. It will therefore be recommended that the respondent upon request bargain collectively with the Union.

It has further been found that the unfair labor practices of the respondent caused and prolonged the strike which began on April 30, 1941. In order to restore the status quo as it existed prior to the time the respondent committed the unfair labor practices, it will be recommended that the respondent offer reinstatement to their former or substantially equivalent positions, without prejudice to their seniority rights and privileges, to those employees who went out on strike on April 30 and May 1, 1941, and who have applied for, and have not been offered, reinstatement, dismissing if necessary any persons hired by the respondent after the strike began. It

(36) Matter of Clarksburg Publishing Co., etc., 25 N.L.R.B. 456, aff'd 120 F. (2d) 976 (C.C.A. 4); N.L.R.B. v. A. S. Abell Co., 98 F. (2d) 951 (C.C.A. 4); Matter of Citizen-News Company, A Corporation and Los Angeles Typographical Union, Local No. 174, 8 N.L.R.B. 997.

will be further recommended that the respondent make whole those employees who went on strike on April 30 and May 1, 1941, and who were refused reinstatement on August 2, 1941, for any loss of pay they may have suffered by reason of respondent's refusal to reinstate them, by payment to each of a sum of money equal to that which he would normally have received as wages from August 2, 1941, to the date of the respondent's offer of reinstatement, less his net earnings,³⁷ if any, during such period.

The views of R. C. Hoiles on trade unions coupled with the acts of the respondent in the past reveal a purpose on the part of the respondent to defeat the basic purposes of the Act and the rights of its employees to bargain collectively through their own representatives. An order narrowly limited to one type of unfair labor practice may be circumvented or evaded by a different type of unfair labor practice, especially on the part of a respondent who gives

(37) By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N.L.R.B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N.L.R.B.*, 311 U. S. 7.

grudging assent to the purposes of the Act. In order therefore to make effective the interdependent guarantees of Section 7 of the Act, to prevent unfair labor practices and a repetition of the strike of April 30, to minimize industrial strife which burdens and obstructs commerce and thereby to effectuate the purposes of the Act, the undersigned will recommend that the respondent cease and desist from in any manner interfering with the rights guaranteed in Section 7 of the Act.

Upon the basis of the above findings of fact, and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW.

1. Santa Ana International Typographical Union No. 579 is a labor organization within the meaning of Section 2 (5) of the Act.

2. All the employees in the composing room of the respondent's Santa Ana plant constituted at all times material herein, and now constitute, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. Santa Ana International Typographical Union No. 579 is, and at all times since March 1, 1940, has been, the exclusive representative of all the employees in the above-described unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on April 29, 1941, and at all times thereafter, to bargain collectively with Santa

Ana International Typographical Union No. 579, as the exclusive representative of the employees in the above-described unit, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

5. By discriminating in regard to the hire and tenure of employment of the striking employees whose names are listed in Appendix A of this Intermediate Report, thereby discouraging membership in Santa Ana International Typographical Union No. 579, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

6. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

8. The respondent has not engaged in unfair labor practices by criticizing and condemning unions as rackets and union members as racketeers, by criticizing and condemning the principles of collective bargaining, and by statements that employees are better off without a union and that unions have never benefited anyone.

RECOMMENDATIONS.

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that

the respondent, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Refusing to bargain collectively with Santa Ana International Typographical Union No. 579 as the exclusive representative of all the employees in the composing room of its Santa Ana plant.

(b) Discouraging membership in Santa Ana International Typographical Union No. 579, or any other labor organization of its employees, by refusing to reinstate any of its striking employees, or in any other manner discriminating in regard to their hire or tenure or any term or condition of their employment;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action, which the undersigned finds will effectuate the purposes of the Act:

(a) Upon request, bargain collectively with Santa Ana International Typographical Union No. 579 as the exclusive representative of all its employees employed in the composing room of its Santa Ana plant, in respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an agreement is reached on such matters, upon

request, embody such agreement in a signed contract with the Union;

(b) Offer to the employees whose names are listed in Appendix A of this Intermediate Report, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges;

(c) Make whole the employees whose names are listed in Appendix A of this Intermediate Report for any loss of pay they may have suffered by reason of the respondent's discrimination in regard to their hire and tenure of employment, by payment to each of a sum of money equal to that which he would normally have earned as wages from August 2, 1941, to the date of the respondent's offer of full reinstatement, less his net earnings, as described above in the section entitled "The remedy," during such period;

(d) Post immediately in conspicuous place in its plant at Santa Ana, including the composing room, notices to its employees stating:

(1) That the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraphs 1 (a), (b), and (c) of these recommendations;

(2) That the respondent will take the affirmative action set forth in paragraphs 2 (a), (b), and (c) of these recommendations; and

(3) That the respondent's employees are free to become or remain members of Santa Ana International Typographical Union No. 579, or any other labor organization, and that the respondent will not

discriminate against any employee because of membership or activity in that organization.

(e) Notify the Regional Director for the Twenty-first Region in writing within twenty (20) days from the date of the receipt of this Intermediate Report what steps the respondent has taken to comply therewith.

It is further recommended that unless on or before twenty (20) days from date of the receipt of this Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

And it is further recommended that the complaint be dismissed insofar as it alleges that the respondent criticized and condemned unions as rackets, union members as racketeers, and the principles of collective bargaining and by stating to its employees that unions have never benefited anyone and that employees are better off without a union.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 2—as amended—any party may within thirty (30) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Shoreham Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceedings (including rulings upon

all motions or objections) as it relies upon, together with the original and four copies of a brief in support thereof. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within twenty (20) days after the date of the order transferring the case to the Board.

WILL MASLOW,
Trial Examiner.

Dated: June 11, 1942.

APPENDIX A

A. L. Berkland	G. L. Hawk
F. L. Berkland	J. W. Jones
C. W. Brakeman	L. C. McKee
William O. Bray	J. W. Parkinson
C. J. Bronzen	J. H. Patison
Charles Clayton	J. A. Sherwood
G. W. Duke	V. C. Shidler
E. W. Ellis	J. E. Swanger
W. H. Fields	E. Y. Taylor

[Title of Board and Cause.]

STATEMENT OF RESPONDENT'S EXCEPTIONS TO THE INTERMEDIATE REPORT

Comes now respondent, Register Publishing Co. Ltd., and excepts to the Intermediate Report dated

June 11, 1942, of Trial Examiner, Will Maslow, in the following particulars:

FINDINGS OF FACT

I. The Business of the Respondent

A. Respondent excepts to the findings of fact generally and specifically upon the ground that the National Labor Relations Act is not applicable to respondent. Respondent is not engaged in interstate commerce, as the Examiner has found. Respondent is a local newspaper, gathering and publishing local news items and items of interest to local residents. The fact that the circulation is only fifteen thousand and thirty-two (15,032) Tr. p. 410, 1 through 5) indicates the community nature of the newspaper, and negatives the possibility of anything approaching a metropolitan publication. The fact that only fifty-nine (59) copies were sent outside the state (Tr. p. 410, lines 2 through 5), is another indication that the position of the paper is intra state.

The purchase of equipment, raw materials such as newsprint, and the like, and the inclusion within one's columns of advertising, news, features, stories and comic strips from without the state in limited amounts (Tr. ps. 411 through 413) should not and do not cause an intra state business to become interstate. *Western Livestock Co. v. Bureau of Revenue*, 303 U.S. 250, p. 258 (1938). *Jones & Laughlin Steel Corp.* 301 U.S. 1 (1937).

B. The activities of respondent do not have a

close, intimate and/or substantial relation to trade, traffic and commerce among the several states, nor do they lead to, or tend to lead to labor disputes, burdening and obstructing commerce or the free flow thereof. When the National Labor Relations act was passed, one of the underlying purposes was expressed as an effort to eliminate major maladjustments and disruptions in the key interstate industries of the country, and particularly to prevent a strike or labor dispute in one industry from having repercussion upon others. It therefore becomes exceedingly important, in the event of a strike or labor dispute, to ascertain whether or not the business in which the strike or labor dispute occurs, is found by the Board to be within the jurisdiction of the Act. In *Newark Morning Ledger Co.*, 120 F. (2d) 262 (1941), the Court said, at p. 268:

“The jurisdiction is not to be exercised unless in the opinion of the Board, the unfair labor practice complained of, interferes so substantially with the public rights created by Sec. 7 as to require its restraint in the public interest * * * The Congress has however, reposed in the Board, complete discretionary power to determine in each case, whether the public interest requires it to act. With the appropriate exercise of that discretion, we may not interfere.” (underscoring ours)

In the case at bar, the strike was called on April 30, 1941, and all but the foreman and one apprentice went out, and except for them, a journeyman and another apprentice who returned, all the remaining

printers stayed out. The strike has nominally existed ever since. In spite of the above however, the evidence shows positively that there has been no substantial interference with the business of the company, that there were no pickets around the plant for about ninety percent (90%) of the time since December 7, 1941 (Tr. p. 419, lines 24 and 25) and picket lines were not continuously maintained at the entrances to the plant prior to December 7, 1941 (Tr. p. 419, lines 2 through 4, page 420, lines 3 through 6), the strike has not caused respondent to be unable to obtain raw materials (Tr. p. 420 lines 7 through 9); had no effect upon national advertising (Tr. p. 420, lines 10 to 11); had no effect upon featured services (Tr. p. 420 lines 15 through 17); had no effect on news services or the news or information coming from them (Tr. p. 420, lines 18 through 20), had no appreciable effect upon local advertising (Tr. p. 420, lines 21 through 23); had no effect upon circulation (Tr. 420, lines 24 and 25); had no effect upon the small out-of-state circulation (Tr. p. 421, lines 1 to 3); had no effect upon local operations in the plant, except for the short period within which respondent, the week following the strike, had to replace those who were formerly employed and went out on strike (Tr. p. 421, lines 4 through 12), and except for the period of several days after the strike, the strike had no effect upon the normalcy of operations of respondent's plant (Tr. p. 421, lines 10 through 12) (Tr. 422, lines 6 through 9). The stereotyper did refuse to go through the picket line, another one was hired, and the situation became

normal (Tr. p. 422, lines 10 through 21). The newspaper went to press, and was published and appeared early in the afternoon of May 1st, the day after the strike was called, and there was no stopping of any issue (Tr. p. 429, lines 1 through 19). The May 1st paper was only two to four pages light of a normal issue, although it was put out with a make-shift crew (Tr. p. 430 lines 5 through 11). It will therefore be seen that the strike, except for the first few hours, caused practically no difference in the normal operations in respondent's plant, and that the evidence shows no resulting effect, whether close, substantial, intimate or otherwise by the strike upon the normal business operations of the respondent. The undisputed testimony of the management also shows that the operations of respondent's composing room were as efficient at the time of the hearing, as prior to the strike (Tr. 481, lines 9 through 14). It would appear to be hard to find a case in which a strike had less effect, either upon the operations of the respondent, or upon the surrounding community, than that in the case at bar. In *N.L.R.B. v. Fainblatt*, 306 U.S. 691 (1939) at p. 608, the Supreme Court of the United States stated:

“In this, as in every other case, the test of the Board's jurisdiction is not the volume of the interstate commerce which may be affected, but the existence of the relationship of employer and his employees, to the commerce, such that, to paraphrase Section 10 (a): ‘in the light of the constitutional limitations, unfair labor

practices have led to, or tend to lead to a labor dispute, burdening or obstructing commerce' ”.

Under such a test, this respondent should not be held to be within the Act. Furthermore, the Examiner in his report (Page 2, lines 33 through 37), seems to indicate that news comes directly to respondent from without the state, and likewise outgoing news goes directly from respondent's plant to out of state points, whereas the evidence shows that the news comes to respondent from either the Los Angeles or the San Francisco office of the Associated Press (Tr. p. 430, lines 18 through 22), and that news from respondent is collected by one of respondent's employees who also acts as Associated Press agent in the plant (Tr. p. 430, lines 23 through 25) (Tr. p. 431, lines 1 through 5); that the news collected is wired merely to the Los Angeles or San Francisco office of the Associated Press, and there is no outside connection with the out-of-state offices of the Associated Press (Tr. p. 431, lines 6 through 21).

In cases where the business of the company is so inherently intra state, control over the labor relations of such should be left to the applicability of the state law, and in this case, to the laws of California (See *Franz Daniels, etc. et al vs. Table Linen Supply Company, et al*, decided by the California Superior Court of Los Angeles County on April 23, 1942, reported in *Commerce Clearing House*, 5 Labor Cases, Sec. 61,047, where the Superior Court through Mr. Justice Willis, held that

the discharge of employees because of their union membership and activities, all violate the public policy of the State of California as declared in Sec. 923 of the California Labor Code, and that a court of equity unaided by any other specific statutory authorization may, in the interest of substantial justice, and to protect the employees' freedom of organization, require the reinstatement of such employees with back pay from date of discharge, less unemployment compensation benefits). It therefore appears that there is ample protection under existing California law, even in the absence of a little Wagner Act in California.

Santa Cruz Fruit Packing Co. vs. N.L.R.B. 303 U.S. 453 (1938), at p. 466 and 467, again restates the rule, that the effect upon interstate commerce is the controlling factor, and not the origin of the raw materials or the place where the products are sold.

In determining the effect upon interstate commerce, the burden of proof rests upon the Board, to establish that there is an effect upon interstate commerce, as well as that of proving the other allegations in the complaint. *N.L.R.B. v. Express Publishing Co.*, 111 F. (2d) 588-589; *Kansas City Power and Light Co. v. N.L.R.B.*, 111 F. (2d) 340, at 347, 348, 349 and 351; *Burlington Dyeing and Finishing Co. v. N.L.R.B.*, 104 F. (2d) 736 and 739.

In determining the jurisdiction or lack of jurisdiction in the case at bar, it is of course necessary to keep clearly in mind the tremendous distinction between it and such cases as *N.L.R.B. vs. Abell*, 97

F. (2d) 951, *Associated Press v. N.L.R.B.*, 301 U. S. 103, and *N.L.R.B. v. Hearst, etc.* 102 F. (2d) 658, in which cases the employers were engaged in vast enterprises, extending not only to other cities, but to foreign countries as well, and where any strike or labor dispute was bound to have a substantial effect upon the interstate commerce, both by reason of the fact that these enterprises were actually engaged in interstate commerce, and also because the effect upon interstate commerce from such labor dispute was at once evident from the very nature of the operations involved. The contract between the vast operations described in these cases and the local community and intra state operations in the case at bar, is significant, and should not for an instant be overlooked.

II. The organization involved.

No exceptions.

III. The unfair labor practices.

A. Preliminary.

Respondent excepts, generally and specifically, to the findings of the Examiner, upon the ground that the Board has failed to prove the unfair labor practices charged in the complaint, and as alleged by the Examiner in his intermediate report. In this connection it should be kept in mind that the burden of proof rests upon the Board, as alleged in discussing the question of jurisdiction. In sustaining its burden of proof, it is incumbent upon the Board to show by substantial evidence, that there have been unfair labor practices engaged in by respondent,

and a mere scintilla of evidence is not sufficient. As was stated in *N.L.R.B. v. Thompson Products, Inc.*, 97 Fed. (2d) 13, at page 15 (1938): "The rule of substantial evidence is one of fundamental importance, and is the dividing line between law and arbitrary power." In that case, the Court also stated that a finding of the Board not based upon substantial evidence, tends to destroy the purpose of the act, in that it gives rise to discord between the employer and employees, instead of creating harmonious relations between them. Also see *Consolidated Edison Co. of New York, et al v. N.L.R.B.* 59 Supreme Court, 206, at 216 and 217 (1938), and *N.L.R.B. v. Columbia Enameling and Stamping Co. Inc.* 306 U. S. 292 at 299 and ff. (1939).

B. There was no refusal to bargain with the Union.

1. The appropriate unit.

No exceptions.

2. Representation of a majority in the appropriate unit.

No exceptions, except respondent denies that the Union is now the designated representative of a majority of its employees in the composing room, or that the strike has continued ever since April 30, 1941, so far as being actively prosecuted since that date.

3. 1940 negotiations.

Respondent excepts to the Examiner's findings generally and specifically, and in particular because the 1940 negotiations resulted in what amounted to a mutual agreement to continue in effect for an-

other year, the verbal contract under which respondent had been operating since 1937, as the Examiner admits on page 6, lines 9 through 12. Therefore, any unfair labor practices, if they had existed, which is denied, were merged in the agreement to continue on the same basis. The best evidence as to the relationship between respondent and the Union up to the 1941 negotiations is indicated in respondent's Exhibit "1", dated April 3, 1941, being a letter to Mr. C. H. Hoiles, Business Manager and Labor Relations Executive for respondent, by the Union, through George W. Duke, President, which ended as follows:

"The cordial relations existing between yourself and the Union men in your employ should give you great satisfaction in these days when there is so much strife between employers and employees. We trust that this feeling of partnership may continue and be strengthened."

In face of this declaration by the Union, in requesting a reopening of negotiations in April, 1941, and in face of the fact that agreement had been reached in 1940 to continue the existing agreement, respondent does not believe that a finding that any unfair labor practice took place in 1940, is justified.

At the trial, Respondent's attorney objected to the introduction of evidence as to the 1940 negotiations, but such objection was overruled by the Examiner (Tr. p. 20, lines 5 through 25,—page 21, 1 through 5).

4. Negotiations in 1941 and generally.

Respondent excepts generally and specifically to

the Examiner's findings, and particularly to the finding that there was a failure on the part of respondent to bargain in good faith.

The Examiner has set forth in his report, a number of meetings both in 1940 and 1941, showing unmistakably that actual negotiations were conducted between the Union and respondent. That at these meetings, the various points of difference were discussed and re-discussed, that counter-proposals were made by the management as to matters deemed important to it, and that in the 1941 negotiations, when adverse conditions were already facing the employer, it offered first verbal and then written counter-proposals on matters which the negotiations showed to be of the utmost importance to it. There is no evidence in the record that respondent at any time either refused to meet with the Union or refused to bargain with it or its representatives. On the contrary, the record does show that the respondent never refused to meet with the Union, as shown by the undisputed testimony of C. H. Hoiles (Tr. p. 444, lines 13 through 15) (Tr. p. 146, lines 23 through 25) (Tr. p. 147, lines 1 through 10) testimony of Seth Brown, International representative of the International Typographical Union.

Respondent particularly excepts to the failure of the Examiner to take into consideration or to give due weight in his deliberations to much evidence strongly substantiating a conclusion directly contrary to that of the Examiner, and further establishing that there was unmistakably a genuine negotiation between respondent and the Union, in

which there was a very definite and crystallized conflict of interest and viewpoint to such an extent that respondent could not have come to agreement with the Union except upon yielding to the terms demanded by the Union. It would be the necessary corollary to the Examiner's finding if carried to a logical conclusion, that unless an employer did actually yield to the Union, he would be found guilty of an unfair labor practice in refusing to bargain collectively in good faith with the Union. What the Examiner has failed to discern, is the difference between a proposal on the part of the management concerning something which is in reality of no interest or moment to the employer and is interposed merely as a means of thwarting the Union, and the proposal by an employer of something which is vitally important to it, regardless of whether it meets with favor by the Union or not, which is identical with the situation in the case at bar. Furthermore, the Examiner apparently takes the position, through his comment on page 5, lines 6 through 9, that regardless of the justification, the employer is guilty of refusing to bargain in good faith if he seeks to better his own position in negotiation, if as is inevitable, this would result in what the Examiner calls a "worsening" of the then existing conditions of his employees. It should be remembered that the tide of labor relations and labor negotiations, ebbs and flows according to the conditions which surround the industry and the particular business at the time, and also depends in part upon the economic and strategic position of

the parties. This the Examiner has utterly failed to take into account, with the result that when respondent asked for an analysis of clauses in the verbal agreement which worked oppressively upon him, for example an insufficient number of apprentices, the Examiner could draw but one conclusion, and that was that the Respondent was not bargaining in good faith.

In reaching his conclusions, the Examiner neglected to give due consideration to the realistic situation confronting the Respondent, at the time of the negotiations in 1941. He did not consider important, the fact that respondent was paying wages, admitted by the Union to be those equal to respondent's competition, nor did he draw a sufficient distinction between wages to be paid in a commercial shop and those on a daily newspaper. Judging from the Examiner's report, there was to him only one way in which wages could be changed through negotiations, and that is upward, and only one manner in which any clauses in a labor contract could be changed, and that is in favor of the Union. However true this may be generally, it is not an infallible rule, and one must take into consideration the condition of the industry and ascertain whether its revenues are increasing or decreasing. As will be shown later, revenues were decreasing for respondent. It is not the concern of these exceptions, nor should it have been the concern of the Examiner in his report, to attempt to determine upon the merits, whether the Union or Respondent was correct in its position. What is important is

whether or not each party was bargaining in good faith, proposing and demanding with sincerity, concessions believed by it to be essential to a proper contract between the parties. If this was done, there was bargaining in good faith, even though one or both the parties may have been extremely partisan, selfish, and perhaps clearly unjustified in the position taken. Is the Examiner in a position to state unequivocally from the evidence, that respondent could not have been justified or in good faith, in advocating maintenance of the hourly rate of wages, but increasing the number of hours from 37½ to 40 per week, and in demanding that it be given a greater number of apprentices at a time when it was permitted to have two less than the International Typographical Union general rules provided, and that it be given greater flexibility in its shop by having apprentices permitted to work on machines before the sixth year, when Seth Brown, the International representative of the International Typographical Union, stated they could have learned to operate the machines years before the sixth year. Unless the Examiner is himself justified in stating that respondent could not have been justified and in good faith in advocating these proposals, at a time when the barometer of national advertising showed a present and anticipated decline in such advertising, then his finding a refusal to bargain in good faith is without adequate foundation and in reality constitutes an attempt by him to substitute his judgment for that of respondent in two matters of extreme importance to it.

The position of respondent was that it had what was in certain respects, an unsatisfactory written but unsigned contract with the Union, and that it was willing to grant increased weekly wages if it could secure more work from its employees in the composing room, and if at the same time it could correct certain provisions deemed by it to be unfair with regard to apprentices. The Examiner fails to appreciate the difficulties of operation which confronted respondent, and draws the conclusion that the relief which it sought in the negotiations from the apprentices' clause in the existing written unsigned contract, involving matters of great importance to it, was a red herring drawn across the path of the negotiations for the purpose of thwarting the Union, which is an inaccurate and unjustified conclusion. Further, it is significant that when the final communication, under date of April 26, 1941, was prepared and sent to the Union by respondent, setting forth the final position of respondent in the April, 1941 negotiations, nothing was said with regard to unwillingness to sign a contract, and it should be remembered that this letter, Board's Exhibit "7", was a letter which came after the matter had reached a stage where Mr. C. H. Hoiles had formally placed the status of the negotiations before the Board of Directors, and where the letter in question was signed by the Corporation itself, through its Secretary and Treasurer, as it so states upon the Exhibit, rather than by him individually, as Public Relations *office* of the company. Mention is made of this now, because of the great stress laid

by the Examiner upon the fact that C. H. Hoiles expressed unwillingness to sign a contract. In this connection it should be borne in mind, first, that at no time during the 1940 and 1941 negotiations, was an agreement ever reached upon what terms would be put in a written contract, and second, that by the terms of respondent's counter-proposal of April 26, 1941, the expressed unwillingness to sign a written contract had been dropped, as had the other demands of respondent, except those pertaining to wages and apprentices. It is apparent therefore, that the management had made substantial concessions in this offer by yielding with regard to its various other demands in matters of importance to it.

Can it be fairly stated that the respondent was unreasonable in believing that any wage increase in its composing room should in fairness be also given in like manner to other employees within its plant, whether organized or not? Otherwise respondent would in effect, be discriminating against such other employees in favor the the members of the Union (Tr. p. 134, lines 1 through 7). Was respondent unreasonable in believing that it should not pay wages which were higher than its competition, namely, other similarly situated daily newspaper with which it had to compete in its business (Tr. p. 121, lines 2 through 10)? Can we say that respondent was beyond the bounds of reason in asking for improvement in the operation of its composing room, which could be brought about to increase the efficiency of its plant, without at the

same time injuring its employees, such as increasing the number of apprentices to such an extent as to properly personnel the shop, even under International Typographical Union rules (Tr. 102 lines 6 through 16), and permitting apprentices to work on machines before the sixth year, which even by Union testimony they were able so to do (Tr. 130, lines 2 to 24)? That the apprentice might also be benefited by an acceleration of his training on the machines, apparently was never contemplated by the Examiner, or that having more men in a shop, capable of operating the machines would give the shop more leeway and flexibility, also had no appeal to him (Tr. p. 130, line 25, and 131 lines 1 to 3).

What fair-minded person can fail to draw the conclusion that there was unmistakably an honest difference of opinion, as well as a direct conflict in interest, between the Union and the Respondent during the negotiations, ending in the April 30, 1941 strike? If this be the case, and it is hard to see how this can truthfully be denied, then a holding that respondent has been guilty of unfair labor practice in fighting for its conviction and best interests, is in reality to determine that unless the employer invariably yields to the Union demands, he is always going to be put in the position of having committed an unfair labor practice, and the Examiner, the Board or the courts are in reality substituting their judgment as to what is important, for that of the employer.

Categorically further excepting to the Exam-

iner's report with reference to the April, 1941, counter-proposal by respondent as to wages, the Examiner seems to believe that respondent was under an obligation to make a further offer when the Union requested it, but the answer is that C. H. Hoiles had come to the conclusion that no increase in the hourly rate was justified, and certainly it is not an unfair labor practice to continue to adhere to his own conviction in that regard. The letter of April 29, 1941, from Respondent to the Union, it is true, merely repeated the wage counter-proposal of the management, given in an earlier negotiational meeting during that month, but as has already been stated, this represented the fixed conviction of the management that the hourly rate should not be increased, and in fact constituted a withdrawal by respondent from its position with regard to all other matters except with regard to wages and apprentices.

That this was understood by the Union, is apparent from Seth Brown's told with C. H. Hoiles the following afternoon, on April 30, when he made no mention of former differences, which he considered settled by the letter, including respondent's previously expressed refusal to sign a written contract. Seth Brown told C. H. Hoiles that "apprentices" was the stumbling block, and the Union could not accept respondent's proposal with regard to apprentices, as it violated the general laws of the International Typographical Union. However, examination of the latter does not disclose that they prevented acceptance of the respondent's proposal,

or were violated by it, since the Union knew that the two things meant by "complete control of the number of work of our apprentices" were increasing the number of apprentices, and putting them to work on the machines prior to the sixth year, which Seth Brown testified were the two subjects in controversy (Tr. p. 135, line 25, page 136, lines 1 through 3). Section 13 of the International Typographical Union laws were referred to by Mr. Brown as being the section which prevented the work of the apprentices on the machines prior to the sixth year, and Section 13 reads:

"Arrangements should be made to have apprentices during the sixth year, instructed on any and all type-setting and type-casting devices, in use in the offices where they are employed."

(tr. p. 98, lines 1 through 9). Asked if there was any clause which states that apprentices cannot be trained until the sixth year, Mr. Brown answered that he could not give any specific reference (Tr. 98, lines 15 through 17). It will be seen therefore, that the Union's position was actually not prohibited by International Typographical Union laws, and certainly the increase in number of apprentices from the three then permitted to respondent, to the five permitted under International Typographical Union laws, was not a violation of International Typographical laws, (Tr. 102—6 through 16) (Tr. p. 101, lines 1 through 11), showing that up to the strike of 1941, that respondent had twenty-two (22) journeyman printers, and three (3) apprentices.

Even if the Union had not known the proper interpretation to place upon respondent's demand for complete control over the number and work of apprentices, since Mr. Brown testified that there could be a contract without the consent of the International Typographical Union (Tr. p. 96, lines 15 through 18), it would have been possible to have such a contract between the Union and Respondent.

It is also significant that the Union has not taken the position that respondent did not actually desire the concessions it was asking as to apprentices, or that respondent did not feel that these concessions were highly important to it, indicating that the Union did not take the position that the proposals were not put forth in good faith.

Seth Brown testified that the specific provision in respondent's last counter-proposal which caused the difficulty, was that relating to apprentices (Tr. page 84, lines 6 through 16), so that it seems to be a fair inference from his testimony that it was the counter-proposal with regard to apprentices which actually brought on the strike.

George Duke, President of the Union, testified that refusal to sign a contract was discussed at the Union meeting on April 30, just prior to the strike vote being taken, but he does not testify that the previous refusal to sign a contract was a cause of the strike, although he mentioned it as one of the differences between respondent and the Union (Tr. p. 226, lines 16 through 25, and 227, lines 1 through 11). Respondent therefore excepts from the apparent indication by the Examiner, that respondent's

previous refusal to sign the agreement, was actually the cause of the strike.

With reference to the Examiner's paragraph on page 7, lines 40 through 43 of the Intermediate Report, it should be pointed out that in answer to the remark by George Duke on the evening of April 30, after the strike vote had been taken, Hoiles said:

"I want you to know that R. C. and I have not wanted this thing."

(Tr. p. 229, lines 2 through 4), he also had told Duke on the preceding Saturday that he, too, hoped that the Union and Respondent could come to an agreement (Tr. page 226, lines 3 through 5).

In an attempt to follow categorically the outline of the Examiner's intermediate report, certain testimony, comments and argument have been placed under the foregoing heading, rather than later in the exceptions, and it is requested that they be considered in connection with the Examiner's heading entitled "D"—Concluding Findings."

5. The Clovis News-Journal.

No exceptions.

6. R. C. Hoiles' views on Unionism.

The evidence in the record is undisputed, that C. H. Hoiles had complete control of labor relations of respondent, and not his father, R. C. Hoiles (Tr. p. 466, lines 23 through 25, 467, lines 1 and 2). Therefore, R. C. Hoiles' views, as expressed in editorials, are not material to the case, and since not

considered evidence of unfair labor practice by the Examiner, by his own statement and ruling, need not be discussed in these exceptions. The record already contains (Tr. pages 386 through 397, line 2), a discussion before the Trial Examiner with regard to this subject.

It might be pointed out, however, that one of the articles referred to by the Examiner, was written May 31, 1940, nearly a year before the strike, one on January 22, 1941, more than two months before negotiations commenced in 1941, and more than three months before the strike, and the other two editorials were written in May 1941, following the strike. The editorials were not shown to have been written with any attempt to influence, restrain or otherwise interfere either with any negotiations, none of which were taking place at the time, nor with the Union or its members, nor was it shown that they had any such effect, except that it was testified that some of the Union members resented them.

With regard to the conversation between R. C. Hoiles and George Duke on January 15, 1941, it appears to have been one of a number of informal talks which had taken place over a period of years, where ideas were exchanged, and where only a small part of what was said, was quoted. The remark of Mr. Hoiles was not alleged to have been made to interfere with, restrain or coerce either the employees or the Union, and there is no evidence that it did.

In this connection, respondent excepts to the

footnote 14, of the Examiner, in holding that there was a connection between the views of R. C. Hoiles, and the position taken in collective bargaining conferences by C. H. Hoiles. However, if, as the Examiner seems to believe, there is any connection, it would at once be apparent that the management had deep convictions with regard to the subject of apprentices, and felt that the situation as existed under the written unsigned contract of 1937, involved abuses which respondent believed very strongly should be rectified.

C. The refusal to reinstate striking employees; interference, restraint and coercion.

Respondent excepts to the Examiner's report under this heading in the following particulars:

C. H. Hoiles did not, according to the evidence, call William Bray into his office (Tr. p. 322, lines 17 through 25). The conversation which he had with him, took place after the calling of the strike, and it is significant that the alleged remark of C. H. Hoiles that the respondent would never sign up with the Union, curiously was not elicited until the re-direct examination of Mr. Bray, who though having discussed the conversation with Mr. Hoiles on direct and cross-examination, made no mention of this remark until re-direction examination, and then only after a leading question put to him by the Attorney for the Board, over the objection of the Attorney for respondent.

The talk which R. C. Hoiles had with Mrs. Bray

at her home on May last, also took place after the strike.

C. H. Hoiles' talk on May 2nd or 3rd with George Duke, is important in showing the willingness of respondent to take back any of the strikers who wanted to return to work, and whose services could be utilized in the vacancies then existing, before these vacancies were filled by permanent replacements. The letter of the respondent, under date of August 2nd, 1941, Board's Exhibit "8", also states the offer through George Duke, President of the local Union, to take back Union members who were out on strike, who could be utilized if they returned to work because of the vacancies existing at that time. It will be seen therefore, that from the very start, respondent was willing to take back the strikers, all of whom belonged to the Union, but that with two exceptions, the men did not come back.

When the Examiner, in determining whether the remark of C. H. Hoiles alleged to be made to Clarence Liles and Edward Saleh was as stated, accepts their variation instead of that of C. H. Hoiles, upon the ground that Liles and Saleh had little interest in the outcome of the proceeding, he neglected to recall that the evidence showed that Clarence Liles was President and Business Agent of the Allied Printing Trades Council (Tr. p. 358, lines 23 to 24) (Tr. 377, lines 11 and 12), and that Saleh was not only a member of, but Secretary of the Stereotypers Union, one of the Unions which was closely associated with the Typographical Union in the Allied

Printing Trades Council (Tr. p. 375—lines 4 to 5, and 349, line 19). Liles testified that at that conference, C. H. Hoiles spoke in a very low and very friendly voice (Tr. p. 352, lines 1 through 5), that when he said the Typographical Union boys would “never come back”, he didn’t say it in a threatening tone (Tr. 352, lines 18 through 23), that C. H. Hoiles expressed no unfriendliness about the Typographical Union to Liles (Tr. ps. 353, lines 24-25, 354, line 1 and 2), that C. H. Hoiles didn’t use the words “wouldn’t let them” come back (Tr. p. 355, line 4); that no remark of anger or disparagement against the Typographical Union was made by Hoiles to Liles (Tr. p. 355, line 8 through 13), that Liles “left Mr. Hoiles very pleasant,” when he walked out of the office (Tr. p. 355, lines 13 and 14), that the Typographical Union has no signed contract with respondent (Tr. p. 355, line 24), and that the Stereotypers have worked for Respondent under Union conditions for something over twenty (20) years (Tr. ps. 355, line 25, 356, lines 1 through 4).

When the Examiner states that the Union agreed to submit the dispute to arbitration in May, 1941, at the behest of the conciliator of the United States Department of Labor, Examiner neglects to state that the past history with regard to arbitration as to disputes between these two parties had been that the Union was agreeable to arbitrating only the question of wages, and not other matters in dispute (Tr. p. 133, lines 14 to 16, and lines 22 to 25). Obviously, if Respondent could not have included in the arbitration, things which were important to it, it

can be readily seen why it did not become enthusiastic about arbitration.

In answer to the Union's letter of about July 25, 1941, to C. H. Hoiles, requesting a meeting with respondent "for the purpose of renewing negotiations and reaching an agreement for the reinstatement of the former Union members of the Santa Daily Register," Respondent's letter of August 2, 1941, did not refuse to meet, and set forth in its letter the fact that only after it had offered in May, shortly after the strike began, to take back employees who had gone out on strike, did it then bring in other employees to fill vacancies which necessarily had to be filled. Here again the letter states that the reasons as to why the Union and the management found it impossible to get together, were increased wages and apprentices, with no mention of any refusal to sign a written contract. The Examiner seems to believe that instead of being honest and fair with the Union in telling it that the respondent had not changed its position and had been forced to employ and had employed certain men to work its composing room, that it should have been cagey in not letting the Union know respondent's position and in not stating that it actually had employed certain people necessary to put out the paper. It will be unfortunate if such a view prevails, and will not be conducive to sincerity, honesty and fair dealing between Unions and employees, if employers are forced to say one thing when they mean another, to avoid being charged with unfair labor practices. When the Union em-

ployees walked out on strike in respondent's plant, and respondent after talking with the President of the Union a day or two later, offered to bring back the men individually before their positions were filled, and this offer was refused, there was nothing else that respondent could do but either employ others to do the work, or close its plant. Naturally, printers would be reluctant to go to work under such conditions, unless they were assured of reasonably permanent employment. In this connection, one turns to the remark of Edward Saleh, the stereotyper (Tr. p. 377, lines 18 through 21), where he testifies "Mr. Liles was explaining our situation to him (Hoiles), that in all probability the Union would order us not to go through the Typographical picket line, for our own safety as much as for anything else." From this it can be seen that the average printer coming to work might have reasonably anticipated trouble which fortunately did not result, and he could hardly be expected to be induced to come to work unless some sort of permanency was assured him. It is to Mr. Hoiles' credit that he tried to obviate the necessity for permanent replacements by going to Mr. Duke first and offering to bring back the former employees. Certainly he should not be penalized later, for having made this offer before it was necessary to make permanent replacements in the positions made vacant by the strikers.

D. Concluding Findings.

1. The refusal to sign a contract.

Respondent excepts in a number of particulars to the findings of the Examiner in addition to the reasons already given. What the Examiner has to say about an employer's refusal to reduce to writing and sign an agreement which has actually been reached with a labor union is true, but there were several strong, differentiating facts in this case. The first, of which mention has already been made, is that at no time did the parties ever agree upon what should be put into the contract, so that what the respondent might do in such an event was in reality a moot question. It is not immaterial as the Examiner finds, that no understanding has been reached as to what would be included in the contract, and on the contrary it is exceedingly material that the parties were never in the negotiations leading up to the strike in 1941, of one mind as to the provisions to be included in such a contract. Another differentiating factor here, was that respondent had lived up to the written but unsigned contract of 1937, in the same manner as if the contract had actually been signed (Tr. p. 136, 8 through 20), respondent's Exhibit "1." It is true that Mr. Brown qualifies his testimony, but if there had been any real battles between the Union and the respondent over the contract, there is no question but that they would have been brought out at the trial. In the third place, it should be taken into consideration that the past history of this paper was one of unsigned agreements, and whatever the legal nicety may be, it is perfectly understandable to the layman that the Hoiles resented any infer-

ence that their word was not as good as that of the former owners who had not had a written contract with the Union. The fact that R. C. and C. H. Hoiles, in November, 1940, agreed to a written contract for the Clovis News-Journal was indicative that they were not absolutely opposed to a written contract, and was consistent with their unwillingness to sign a contract in Santa Ana if the basis of the demand was that their word was not as good as those who had formerly owned the paper. That their word was good, and that their commitments were kept, is illustrated by the testimony of Mr. Liles already referred to, that the Stereotypers Union had been in the plant for over twenty (20) years, under satisfactory relations with the management, and yet without a written signed contract (Tr. p. 355, lines 22 through 25, page 356, lines 1 through 4). Respondent would find itself more in accord with the Examiner's findings in this connection, if it did not believe that the essence of the Examiner's finding of unfair practice was not that it said it would not sign an agreement, but that in fact it refused to yield to the Union's demands on the essentials of such an agreement. That appears to be the real basis for the finding of unfair labor practice on the part of the Examiner. Yet the Courts have held that it is not the function of the National Labor Relations Board, nor of the Courts themselves to force an agreement upon the parties to a labor negotiation, providing they negotiate in good faith. See *Wilson & Co. Inc., v. National Labor Relations Board*, U. S. Circuit Court of Ap-

peals, 8th District, 3 Labor Cases, page 60,167 (1940); *H. J. Heinz Co. vs. National Labor Relations Board*, U. S. Supreme Court, 3 Labor Cases page 51,107 (1941). In the Heinz case, the Court stated:

“It is true that the National Labor Relations Act, while requiring the employer to bargain collectively, does not compel him to enter into an agreement. But it does not follow . . . that, having reached an agreement, he can refuse to sign it . . . The freedom of the employer to refuse to make an agreement, relates to its terms in matters of substance, and not, once it is reached, to its expression in a signed contract . . . ”

These words, which are in the same tenor as those used in the Wilson case, show a definite distinction between the obligation of the employer to reduce to writing and sign a contract after the terms have been agreed upon between the parties, and the freedom of the employer by which he may refuse in good faith to agree to be bound by the proposed terms of a contract with which he is not in accord. In the case at bar, respondent never agreed with the Union upon two essential clauses of the contract relating to wages and apprentices, and in the absence of such agreement, the Union never asked respondent to reduce remaining provisions to written contract form and to sign such a written contract. Of course the Examiner is correct in stating that if there had been an agreement, which there

was not, there was no real or legitimate interest to be protected by not executing the contract, but this argument falls to the ground when no agreement was reached, as in the case at bar. The Examiner is also correct that the Union is entitled to a legally enforceable agreement, and not a mere unsigned memorandum, and that the Union is entitled to have a legally enforceable document, but here again this presupposes the existence of a meeting of the minds, and an accord on essential clauses, which was not present in the case at bar. Therefore, it should not be deemed to be an unfair labor practice if the respondent indicated early in the negotiations that it was unwilling to do what the law required it to do in the event an agreement was reached, when in fact the testimony shows that the contingency of an agreement was never reached.

Equally important in this connection moreover, is the fact that in the management's final counter-proposal, it withdrew from its former position, and yielded to the Union on a number of disputed points, including its former unwillingness to sign a written contract. The testimony of Mr. Seth Brown has already been referred to above, and need not be repeated here, except to comment that the cause of the strike was the position taken by the management in its final counter-proposal of April 26, 1941, on the question of apprentices. Had the offer of the management as contained in that letter of April 26, 1941, been accepted, the agreement would then have included the Union's version of all other disputed questions, and the Union

would be entitled to believe that the management had agreed to reduce these to a final written form as a contract, and to execute the same. Consequently, any possibility of the existence of a continuing unfair labor practice, which might have been deemed to be the cause of the strike, if there is any basis for such an assumption, disappeared when the respondent withdrew from its position and offered to enter into an agreement with the Union on the Union's terms, except for apprentices and wages, and thereby in effect respondent agreed to reduce the entire matter to writing in the form of a contract, and to execute the same.

2. The proposal for an open shop.

This proposal appears to have been more seriously urged early in the negotiations, than toward the close of the same, and was advanced in March, 1940 negotiations which were merged in the agreement to continue for another year with the written unsigned contract of 1937. It is true that the provisions of the latter called for a closed shop. The Examiner in his findings, seems to think there is something unholy or unclean in believing in an open as contrasted with a closed shop, and certainly respondent should not be penalized merely because it did not during the negotiations give each and every reason as to why it preferred an open to a closed shop. There is some question as to whether the proposal, which was that there should be no discrimination between Union and non-Union, was actually advanced by respondent as an open shop proposal. However, even if such was the case,

the Examiner was not in the opinion of the Respondent, justified in finding the advocacy of such a proposal to be evidence of an unfair labor practice, as a failure to bargain collectively in good faith. Again, respondent believes that the views of R. C. Hoiles should not be attributed to C. H. Hoiles, who negotiated for respondent, but the editorial utterance of R. C. Hoiles certainly did express on his behalf at least a sincere and deep-seated hostility to the closed shop, as embodied in contracts such as in the written unsigned contract of 1937, which was renewed in the spring of 1940 for another year, and which was in effect at the time of the April, 1941 negotiations. A closed shop is, as the Examiner stated, customarily a subject of negotiation, and the mere fact that Mr. C. H. Hoiles did not spell out each and every reason why the management desired something other than a closed shop, particularly in the absence of any request from the Union for such an explanation, should not constitute evidence of unfair labor practice. With the controversy raging throughout the country, over the merits and demerits of open shop and closed shop, it would be indeed the view of an extremist that an advocate of some modified plan whereby there is no discrimination between Union and non-Union men can without more be conclusively found to be indulging in unfair labor practices.

3. The proposal for full control of apprentices.

In its discussion in the 1941 negotiations, respondent has taken up in considerable detail, its proposal

for control of apprentices. Reference is made to the citations and arguments set forth as having a distinct bearing upon this subject. It is to be clearly kept in mind that there had long been a controversy between respondent and the Union as to the number of apprentices which respondent should have in its composing room; that inasmuch as it had twenty-two (22) journeymen there, and the International Typographical Union laws provided for one apprentice for every five journeymen or fraction thereof, respondent would have been entitled under I.T.U. laws, to have five (5) apprentices, and yet it was limited by the 1937 agreement to three (3) apprentices, with which arrangement it was exceedingly dissatisfied; that there had been considerable discussion and dispute in the past over the refusal on the part of the Union to agree that the apprentices might be taught to work on the machines prior to their sixth year, whereas, as has been stated, Seth Brown testified they could learn to do so in two or three years, and notwithstanding that, Jane Hoiles, the daughter of R. C. Hoiles, at about the same age as the apprentices, came in and performed satisfactory work upon one of the machines during the summer of 1939 while on a vacation from school, and her work was good enough to use in the production of the paper, although she had no previous experience, and that there was an apparent shortage of machine operators in respondent's composing room which would have been remedied in part, if not entirely, had respondent been permitted to employ two more apprentices

and put apprentices generally on the machines prior to their sixth year apprenticeship. It is only by considering the wide divergence of opinion between the Union on the one hand, and the respondent on the other, that one can reconstruct the extreme conflict in viewpoint relating to this subject, about which even one of the Union negotiating committee, Patison, chairman of the chapel in respondent's composing room, took the respondent's view, and in part at least disagreed with International Representative, Seth Brown (Tr. 142, lines 12 through 25, 143 lines 1 through 20). It is not surprising, in the light of the conflict between the parties both with regard to the merits and with regard to Section 13 of the International Typographical Union laws, which Seth Brown said prohibited an apprentice from working on machines prior to the sixth year, with which interpretation respondent disagreed, that respondent should have adhered more closely to its proposal as to apprentices, than to any other one matter in dispute, other than wages. Of course it was something as to which both the Union and respondent had deep convictions, and was of tremendous importance to each. It is not surprising that even though it was clearly understood that full control over the number and work of apprentices meant an increase in the number of apprentices, and the freedom to train them on the machines prior to the sixth and last year of apprenticeship, that respondent should have insisted upon language which might very properly be construed by the Union as seeking something more

than respondent actually sought, and that the Union should have resisted a proposal which in its opinion was a serious departure from its desires and usual contract provisions as to apprentices. Here again, however, the Examiner erred in his statement that respondent's proposal was a demand with which the Union was unable to comply, even if it wished. The local could have signed the contract without the consent of the International, as was testified by Seth Brown. However, it was also testified that no counter-proposal was made by the Union which would have permitted either four or five apprentices in respondent's composing room, which would have been completely consistent with International Typographical Union laws (Tr. page 104, lines 1 to 10). Also, the evidence does not show that the Union made any counter-proposal to the respondent that apprentices be permitted to work on the machines for the fifth, or any other year.

In his comments about this proposal, the Examiner again, on page 14, lines 33 through 35, talks about the "reasonableness" of the respondent's proposal, failing to appreciate that the true test was not whether respondent's proposal was reasonable or unreasonable, but on the contrary, whether it was proposed by it in good faith as something which it wished to secure out of the negotiations or whether it was interposed in the negotiations as a sham or pretense, which is strongly denied. Can it be doubted, that in view of the history of the situation existing in respondent's plant, that this question of apprentices was something sincerely

and energetically advocated by it for what it believed to be the best interests of both the apprentices and respondent's composing room?

4. The respondent's position on the wage issue.

In studying the Examiner's findings with regard to the question of wages, it is extremely difficult not to come to the conclusion that what the Examiner really had in his mind comes to this, that if an employer has extra cash in his till, it should be passed out to the employees of the plant, notwithstanding all other factors. It seems inconceivable to the Examiner that an employer should believe that the present wage is all that he should pay. The Examiner seems to be impressed that when the Union changed its own demands three times in 1940, respondent made no counter-offer, and he overlooks entirely the reason that respondent made no counter-offer, which was that it was paying the prevailing scale in comparable competing newspapers. This was the reason why the Union kept coming down on its offer, and eventually agreed to continue the unsigned contract unchanged for another year, without any wage increase for the following year. Then again the Examiner makes special note that Respondent did not contend in 1941, that it could not afford the proposed wage increase. It is immaterial whether or not respondent could afford to pay a wage increase in 1941. If it could not pay it, and it was not paying the prevailing wage rate, then respondent should go out of business on the ground that it wasn't conduct-

ing an economically profitable business undertaking. The criterion was whether or not respondent was paying its employees a wage which was comparable for the same type of work to that prevailing in the same community by its competitors. If by the skill and experience of respondent's management, it was fortunate enough to have a small surplus out of which an increased wage could be paid, then it would not have to go out of business, but it still should not pay it unless it was not paying the comparable wage in the industry. Testimony showed definitely from the lips of Seth Brown that respondent was paying as high a wage as were its competitors. If it be argued that possibly certain of the competitors had not been organized by the Union, the answer is that until such time as the competitor was organized, or it agreed to raise its wage scale along with respondent, respondent should not be singled out and penalized so as not to be able fairly to compete with those engaged in similar business. This test was apparently given little or no consideration by the Examiner, whose views may be summed up in his statement in criticism of respondent "It (respondent) admitted that the increase would not have embarrassed it financially, but argued that granting the printers an increase would have required it to grant similar increases to the other unorganized employees." Here again his test is not whether respondent, in fairness should have granted increases to keep up its part of the standard of living in conjunction with others, but whether or not financially the increase could have been absorbed by respondent.

Carrying his idea to a logical conclusion would throw all wages out of line, because such increases, under his theory, should be granted except when to do so would financially embarrass the employer. Then too, one need not have to have an anti-Union bias, and the writer certainly has none, to believe that it is only fair and just to treat one's unorganized employees simliarly to those who are organized, and that if an increase is granted to one classification of employees, which raises that classification above another similar classification, then an equal increase should be given to the other classification, with which the Examiner seemed to be very clearly not in accord. Instead, the Examiner complains because the printers were not given their increase until respondent was able or willing to increase the wages of its remaining sixty (60) odd unorganized employees. One may be a firm believer in the purposes of the Wagner Act and in Unions, but still be of the opinion that any such view is unfair and unjust in affording one treatment for those who have combined to wield economic power through collective bargaining, and another and much less favorable treatment to those whose cause may be equally meritorious, but who for one reason or another have not combined to wield an economic weapon in the same manner as the former group. When the Examiner states his disapproval of respondent's position because he says it would necessarily mean that an organized unit of an employer could not hope for a wage increase until the entire plant as a whole received one, regardless of the individual

merits of the needs of each particular craft or group, he saves himself by reason of the qualification referring to individual merits. In reality, if the various crafts and groups in a plant are each receiving the prevailing or going wage, for the type of work being performed, then a wage increase should be general in proportion to the value of the services each group performs, and it would not be fair to make an unwarranted increase in the scale of one group, without at the same time making a comparable increase for the others. It will be seen therefore, that from respondent's view, C. H. Hoiles is entirely correct in viewing the matter of wage increases squarely on the basis of what was the prevailing wage, and could any increase be also granted to others in the plant, rather than upon the test of the Examiner as to whether respondent could afford financially to grant an increase to the printers, who constitute only about twenty-five (25%) percent of the total number of employees in respondent's plant.

Another factor which the Examiner fails to take into consideration at all, is the undisputed testimony of C. H. Hoiles that national advertising was on the decline during the negotiations in 1941 (Tr. p. 414, lines 18 through 24), trend which was admitted by the Board's Attorney at the hearing (Tr. 414, line 24). Incidentally, since this is a matter of public record, the Court could take judicial notice that not only national, but local advertising has had a very serious decline for newspapers generally, and particularly country newspapers such

as respondent, since April, 1941, and that such decline continues very materially today, with a very unfortunate decrease in the revenues of these newspapers, of which advertising is their chief source of income. But this subject was not one in which the Examiner seemed to take any interest whatsoever.

The Examiner mentions in his report that in March, 1941, the Union negotiated a series of contracts with the commercial job printers in the Santa Ana vicinity, and also with three weekly newspapers similarly situated. These contracts raised the hourly wage rate for printers working in them, from which the Examiner draws the conclusion that respondent should also have raised its hourly wage rate similarly. What he fails to take into consideration, is that there is a broad distinction between the work of printers in a daily newspaper, and printers who work in either commercial plants or in weekly newspaper plants. In both the latter categories, there is not the steady, regular, uniform work that there is in the composing room of a daily newspaper. Particularly in commercial shops, the work is often more exacting, it is crowded into a shorter period of time, as a special job has to be gotten out, and printers in commercial job plants are often idle a considerable portion of time except when special jobs are in the shops (Tr. p. 432, lines 16 through 25, p. 433 lines 1 through 13). Consequently, the hourly operating costs in a commercial job plant, are bound to be higher than those on a daily newspaper. Although the Exami-

ner points to the increase in hourly wage rate in the commercial plants, and in the three weekly newspapers in the vicinity, he does not take into consideration that there was no increase in the daily wage rate in the daily newspapers with which respondent was competing, and the testimony of Seth Brown already referred to, was that respondent up to the time of the strike in April, 1941, was still paying as high a scale as its competitors (Tr. 120, lines 22 through 25; p. 121 lines 1 through 10).

Furthermore the testimony of Mr. C. H. Hoiles shows that the operating costs in the composing room of the respondent in the years 1939 and 1940 were actually higher than the comparative operating costs in the boom year of 1929 (Tr. p. 440, lines 7 through 25; p. 441 lines one through 12).

Respondent believes very sincerely that in April of 1941, and it is even more true today, in view of the national emergency, and the fight our country is making for its very existence, that the average American worker would prefer to work longer hours at the same hourly rate, even up to 48 hours per week or more, rather than to have his weekly hours reduced or maintained at less than 40 hours per week. Inasmuch as respondent was paying the prevailing wage scale of daily newspapers in the community, and had been for some time prior thereto, and was continuing to do so in spite of steadily decreasing revenues, respondent believes that it will be difficult for the average fair-minded person to agree with the Examiner that it has been

guilty of an unfair labor practice, simply because it has refused to step out of line and pay a higher hourly wage than prevailed in the field and with its competitors. On the contrary, in agreeing in April, 1941, to increase the working hours from 37½ to 40 per week, which was something as to which the Union had no option under the existing written but unsigned agreement, respondent was unmistakably offering the opportunity to the printers in its composing room, to earn two dollars and fifty (\$2.50) cents per week more.

5. Refusal to bargain during the strike.

Many of the Exceptions, and much of the comment which respondent would ordinarily make in this connection, has already been set forth under "C" of the Examiner's report. However, respondent does strongly except to the finding of the Examiner that "the crucial issue of reinstating the strikers, was arbitrarily excluded from the matters to be discussed." Respondent did not arbitrarily or otherwise refuse to discuss the issue of reinstatement. What it did state was that by reason of the failure of the Union on May 2nd or 3rd just after the beginning of the strike, to consider the return of the strikers to work at that time, as invited so to do by respondent and communicated to George Duke, President of the local Union, before substantial replacements had been made by respondent, that the Union itself had placed its members who had been regular employees of respondent, in an unfortunate situation, which respondent re-

gretted, but for which the Union, and not respondent was responsible. Furthermore, even though respondent was ready and willing at all times to discuss matters of mutual interest with the Union and its representatives, nevertheless in addition to the refusal of George Duke on behalf of the Union, to permit striking employees to return on May 2nd or 3rd, 1941, the Union, except for its letter of approximately July 25, 1941, made no other effort either to resume collective bargaining negotiations with respondent, or to seek reinstatement of those who were out on strike. The interests of the employees themselves, that of the Union, and that of the respondent, each required that the Union, which had taken the strike vote and pulled the printers out of the shop, make every effort to ascertain whether or not it would have been possible for the strikers to return to their work pending further negotiations with respondent. Consequently, the Examiner is again in error when he states that there was any refusal on the part of the respondent to bargain during the strike, and the mere statement in the letter of August 2nd, by respondent to the Union, that respondent's position had not changed as to wages and apprentices, was not a refusal to bargain, but merely a re-statement of the position which it had taken throughout, with regard to these two subjects in the April, 1941 negotiations.

6. Conclusions as to the bargaining negotiations.

In excepting to the findings of the Examiner under this heading, respondent again refers to the

testimony, comments and arguments submitted by it with regard to the points of difference between the Union and itself. If the Examiner is, as he states, convinced "that the respondent on April 26, 1941, and at all times thereafter, refused to bargain collectively with the Union, as exclusive representative of the employees in an appropriate unit", he has, as has already been stated, arrived at such a conclusion and finding by failing to take into consideration, matters which were essential, and without which his conclusion and finding could not be other than one-sided, and based upon only a small portion of the evidence submitted at the trial. Not only has the Board failed to uphold the burden of proof falling upon it to establish the unfair labor practices charged in the complaint by a fair preponderance of the evidence, but it was necessary for the Examiner, in order to reach his conclusion and finding, to resort to inference, whether "well nigh inescapable or otherwise", innuendos and caprice, in his effort to find a basis for the conclusion which he very obviously sought to attain, regardless of the substantial evidence in the case. Just as the Examiner was either unwilling or unable to appreciate that in advocating a greater number of apprentices, and their earlier training on the machines, respondent was not only fighting for its own best interests, but also that of the apprentices themselves or those who might have become apprentices, were they not excluded by the Union's practice of limiting apprentices, and also for those who would have been able to learn much faster than the Union was willing

to permit, thus in effect shutting the door of opportunity in the face of young men who are desirous of becoming apprentices and learning the trade and improving their lot, thus striking a blow at the American system of free enterprise on the part of the individual worker, so the Examiner was also unable to see any viewpoint except that which the Union desired the Examiner to behold.

For these and many other reasons, some of which have already been given, and others have not even been mentioned by reason of the desire not to unduly prolong these Exceptions, respondent strongly excepts to the general conclusion and finding of the Examiner, either that the respondent refused to bargain collectively with the Union at any time, or that it interfered with, restrained or coerced its employees in the exercise of rights guaranteed to them, or that the strike of April 30, 1941, was either caused or prolonged by respondent in any manner, or particularly by what has been charged to be a refusal on its part to bargain in good faith.

7. Refusal to reinstate the workers.

Respondent excepts to the Examiner's findings and conclusions, not only as to the cause of the strike, but that the strikers were entitled to reinstatement thereafter on their own application, whether their places had already been filled by employees hired by the respondent following the strike, or not. In this connection, respondent points out that at no time was there ever an application made by the strikers for reinstatement, that the only communication from

the Union in that connection in asking for a meeting, was met by a response from the respondent that it would sit down and meet with the Union. The letter of the Union which was erroneously stated by it to be a request for reinstatement, and which position was also erroneously upheld by the Examiner, did not indicate under what terms or conditions the employees desired to return, if they did, and how many of them might be expected to return in the event respondent had a place for them. Respondent was never informed in the intervening months which had elapsed since the strike, as to what the Union or the strikers had in mind, or whether they were willing to return under the conditions existing at the time they walked out on strike. How, therefore, can it be truthfully said that the letter of respondent was in any wise a refusal to reinstate?

Respondent emphatically excepts to the Examiner's finding and conclusion that it discriminated in regard to the hire and fire of its said employees, or that it refused to reinstate those who had gone out on strike, or that it thereby discouraged membership in the Union, or that it interfered with, restrained or coerced its employees in the exercise of rights guaranteed to them in Section 7 of the Act. On the contrary, respondent believes and contends that it was not caused by any unfair labor practice on its part, and maintains that the record does not show substantial evidence of any unfair labor practice on its part. In the absence of any unfair labor practice by respondent, causing the said strike, even if there had been an unqualified request for the re-

instatement of the strikers, and a refusal on the part of respondent as employer to reinstate, neither of which was shown by the evidence to have occurred, there was no obligation on the part of respondent to reinstate the strikers. *Export Steamship Corporation*, 12 N. L. R. B. 309 (1939), in which case the complaint was dismissed, even though the company offered only to take back the strikers as it saw fit, and when it had vacancies in its plant. *Milne Chair Company*, 18 N. L. R. B. 53, 56, 58 (1939) where the Union proposed an increased wage scale, and the company made a counter-proposal of a decrease in wages, resulting in a strike. *Decatur Newspaper, Inc.*, 16 N. L. R. B. 489, 495 through 499 (1939), where a strike also occurred as negotiations had broken down. In the case of *Colmer Steamship Co.*, 18 N. L. R. B. 1, page 20 (1939), the Board held that where the strike was not brought about by an unfair labor practice on the part of respondent, it might hire new employees to take the place of the strikers, and need not discharge the new employees to make room for the strikers.

Respondent maintains that the facts of the case at bar are covered by the rulings in the foregoing cases, and that if the Board or the Courts were to hold otherwise, the determination in reality would constitute a ruling that an employer can only refuse at its peril, to accede to the demands of a Union, however unreasonable and at the risk of a prolonged strike and the enforced reinstatement of the striking employees with back pay.

8. The effort to induce Bray to abandon the strike.

Respondent excepts to the Examiner's ruling that efforts made to induce William Bray to return to the employ of respondent after the strike had been called, were unfair labor practices, or that they in any wise caused the strike which had already occurred, or in any wise constituted an unfair labor practice in connection therewith, or that such efforts either interfered with, restrained or coerced respondent's employees in the exercise of the rights guaranteed to them in Section 7 of the Act.

IV. The effect of the unfair labor practices upon commerce.

Respondent denies and excepts to the finding of the Examiner, for the reasons set forth under

1. Relating to the business of the respondent.

V. The remedy.

Since Respondent has excepted to and disagreed with practically all of the ultimate findings of the Examiner, except with regard to editorial comment by R. C. Hoiles, it of course believes that the remedies suggested by the Examiner are not only unnecessary but exceedingly unfair and unjust. A gross miscarriage of justice would result if respondent were required to reinstate with back pay, employees who went out on strike because the management could not in good faith comply with their demands, who never indicated on what terms they were willing to come back, or that they were willing to come back at all, until months after it had been necessary to employ others, and have contrib-

uted nothing to the business of respondent in the interim, in contra-distinction to those who had been doing the work in respondent's composing room since it became necessary to make replacement.

CONCLUSIONS OF LAW.

Respondent excepts to each of the conclusions of law except 1, part of 2, and 8. With regard to part of 2, respondent admits and agrees that all the employees in the composing room of respondent's Santa Ana plant, did constitute at all times prior to the strike and perhaps for a day or two thereafter, an appropriate unit for the purpose of collective bargaining, but denies that after the conversation of C. H. Hoiles with George Duke, President of the Union, on May 2 or 3, 1941, in which respondent offered to take back the employees as needed, which offer was refused by the Union, that thereafter they did constitute the bargaining unit in respondent's plant.

RECOMMENDATIONS.

Respondent excepts to each and every recommendation offered by Trial Examiner.

CONCLUSION.

Respondent respectfully submits that upon the pleadings and the evidence brought forth at the trial, complaint against respondent should be dis-

missed with prejudice, and judgment rendered accordingly for respondent.

Respectfully submitted,

WILLIS SARGENT,

Attorney for Respondent.

Dated: this 30th day of July, 1942.

N.L.R.B. Docketed Aug. 1, 1942.

United States of America
Before the National Labor Relations Board
Case No. C-2225

In the Matter of REGISTER PUBLISHING CO.,
LTD.,

and

SANTA ANA INTERNATIONAL TYPO-
GRAPHICAL UNION No. 579.

Mr. Charles M. Ryan, for the Board.

Mr. Willis Sargent and Mr. Paul Hart, of Los Angeles, Calif., for the respondent.

Mr. Seth R. Brown, of Los Angeles, Calif., for the Union.

Mr. Bliss Daffan, of counsel to the Board.

DECISION AND ORDER

Statement of the Case

Upon charges and amended charges duly filed by Santa Ana International Typographical Union No. 579, affiliated with the International Typographical

Union, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twenty-first Region (Los Angeles, California) issued its complaint dated April 23, 1942, against Register Publishing Co., Ltd., Santa Ana, California, herein called the Respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, together with notice of hearing thereon, were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged, in substance, that the respondent (1) on or about March 1, 1940, and at all times thereafter, refused to bargain collectively with the Union which represented a majority of the respondent's employees within an appropriate unit; (2) since July 29, 1941, has refused to reinstate 20 named employees who had gone out on strike on May 1, 1941; and (3) by these acts and by criticizing and condemning unions as rackets and union members as racketeers; by criticizing and condemning the principles of collective bargaining; by questioning employees concerning the Union; by statements that unions have never benefited anyone and employees are better off without a union; by statements that it would never enter into a written signed contract with the Union; and by promises of reward to employees if they would withdraw from

membership in and activity on behalf of the Union; has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On May 6, 1942, the respondent filed its answer, in which it denied the jurisdiction of the Board and denied that it had engaged in the unfair labor practices alleged in the complaint.

Pursuant to notice, a hearing was held in Santa Ana, California, on May 7, 8, and 11, 1942, before Will Maslow, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and the Union by a representative. All participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. At the close of the Board's case, and again at the close of the hearing, the respondent moved to dismiss the complaint for want of jurisdiction and also because of the insufficiency of the proof. These motions were denied by the Trial Examiner. At the close of the hearing, motions by both the attorney for the Board and the respondent to conform the pleadings to the proof were granted by the Trial Examiner without objection. During the course of the hearing, the Trial Examiner made rulings on numerous other motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed. At the close of the hear-

ing, both the attorney for the Board and the respondent argued orally before the Trial Examiner. The respondent also submitted a brief to the Trial Examiner.

On June 11, 1942, the Trial Examiner issued his Intermediate Report, copies of which were duly served upon all parties, in which he found that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the Act. He recommended that the respondent be ordered to cease and desist therefrom and to take certain affirmative action in order to effectuate the policies of the Act, including the reinstatement with back pay of certain employees. Thereafter, on August 1, 1942, the respondent filed exceptions to the Intermediate Report. None of the parties requested leave to argue orally before the Board.

The Board has considered the exceptions filed by the respondent and, except as they are consistent with the findings of fact, conclusions of law, and order set forth below, finds them to be without merit.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. The business of the respondent

Register Publishing Co., Ltd., a California corporation, is engaged in the publication of a daily newspaper in Santa Ana, California, known as the

Santa Ana Register, herein called the Register. During 1940 all the newsprint used by the respondent, amounting to 1,431,000 pounds, and valued at \$34,636, was shipped to Santa Ana from Canada. During the same period miscellaneous materials and equipment valued at about \$7,000 were likewise shipped from points outside the State of California to the respondent's plant in Santa Ana.

The respondent subscribes to the news services of the Associated Press, the United Press, and the International News Service; the greater part of the news of these services is gathered outside the State of California by these services and transmitted to the Register. This news constitutes about 12 percent of the total news appearing in the Register. In addition, the Register publishes a miscellany of special features, about 90 percent of which is furnished to it by feature services located outside the State of California. These features constitute about 8 percent of the total reading material of the Register.

About 6 per cent of the total revenue of the respondent is derived from national advertisers located outside the State of California. This advertising is transmitted to the Register by agencies likewise located outside the State of California. The respondent's total annual gross revenue is more than \$300,000, two-thirds of which comes from its advertising and the remainder from its subscribers.

There has been no substantial change since 1940 in the operations of the respondent described above, except for a decline in national advertising.

The respondent employs from 80 to 85 persons, about 25 of whom were employed in April 1941, as printers or apprentices.

II. The organization involved

Santa Ana International Typographical Union No. 579, affiliated with the International Typographical Union which was formerly affiliated with the American Federation of Labor but is now unaffiliated, is a labor organization admitting to membership employees in the composing room of the respondent's plant.

III. The unfair labor practices

A. Background

The Register has been published in Santa Ana since at least 1909. From 1909 to about 1928 it was owned by one Baumgartner. In 1928 it was acquired by the respondent, the then chief stockholder being J. F. Burke. In 1935 the Hoiles family, the present stockholders and publishers, purchased the stock of the respondent and have held it ever since.

From 1909 to 1935 the working conditions of the printers in the composing room were governed by an oral contract between the Union and the various owners of the Register. From 1935 to 1937 while the Hoiles family was in control, the terms of the prior oral contract were observed by the Hoiles although the oral contract was not formally renewed.

In 1937 the Union met with the respondent, the publishers of a competing newspaper in the county, known as the Santa Ana Journal, and the owners

of the commercial job printing shops in Santa Ana, and concluded a new agreement. The commercial job printers signed the agreement, but the respondent and the publishers of the Santa Ana Journal refused to do so. The terms of the oral agreement with the respondent were, however, reduced to writing. By its terms this agreement was to remain in force until March 1939 and provisions were contained therein providing for a closed shop and for a wage increase from 87½ cents an hour to 92 cents an hour at the beginning of the period covered by said agreement, and an additional increase to \$1 an hour before the expiration date thereof; limiting the number of apprentices to three and specifying the type of work which they could do; and providing for a workweek of 5 days of 7½ hours, and for the payment of time and a half for all work in excess of 7½ hours on a given day with an option given the respondent to change the workweek to five 8-hour days by giving 2 weeks' notice to the Union. Likewise, this agreement provided that the constitution and bylaws of the Union were made a part thereof.

In March 1939, upon the expiration of the agreement, the Union met with the respondent in an attempt to negotiate a new agreement. While the record is not entirely clear regarding these negotiations, apparently the 1937 agreement was continued in existence by mutual agreement for a period of 1 year, after an effort on the part of the Union to obtain new terms proved unsuccessful.¹

(1) Seth R. Brown, a representative of the In-

B. The refusal to bargain with the Union

1. The appropriate unit

The complaint alleges, and the respondent's answer admits, that all the employees in the composing room of the respondent's Santa Ana plant constitute a unit appropriate for the purposes of collective bargaining. We find that all the employees in the composing room of the respondent's Santa Ana plant have, at all times material herein, and do now, constitute a unit appropriate for the purposes of collective bargaining, and that said unit insures to employees of the respondent the full benefit of their right to self-organization and to collective bargaining and otherwise effectuates the policies of the Act.

2. Representation of a majority in the appropriate unit

The complaint alleges that prior to March 1, 1940, and at all times thereafter, a majority of the em-

ternational Typographical Union, testified with respect to the negotiations in 1939, that "I guess they didn't come to an agreement on the terms and finally it was allowed to continue" until March of 1940. George Duke, vice president of the Union, testified that in March 1939, "there was a brief negotiation during which time no change in the contract was made, although requested. I believe at that time, although I was not present, I believe a request was made that a contract be signed and continue for another year." Duke was then asked if he knew whether or not the agreement was continued in existence from March 1939 to March 1940 and replied, "Yes, because I was present at the union meeting at which we agreed to continue for another year by action of the membership."

ployees in the respondent's composing room designated the Union as their representative for the purposes of collective bargaining with the respondent and therefore the Union has been since March 1, 1940, and is now, the exclusive representative of all said employees for the purposes of collective bargaining. The respondent's answer admits that up to April 30, 1941, the Union was such exclusive representative.

On the night of April 30, 1941, the employees in the respondent's composing room went on strike, and the strike has continued ever since. As found below, this strike was occasioned by the respondent's unfair labor practices in refusing to bargain with the Union. The employees who were in the respondent's employ and whose work ceased as a result of the respondent's unfair labor practices, therefore, remained employees within the meaning of Section 2 (3) of the Act.

We find that on March 1, 1940, and at all times thereafter, the Union was and that it now is the duly designated representative of a majority of the employees in the appropriate unit, and that, pursuant to Section 9 (a) of the Act the Union was and is the exclusive representative of all the employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. The negotiations in 1940

In March 1940 the Union submitted its proposals for a new contract, requesting a wage rate of \$1.15 an hour and 1 week's vacation with pay

for all printers. As shown above, the existing contract provided for \$1 an hour and contained no provision for vacations. Early in March 1940 C. H. Hoiles, the secretary-treasurer of the respondent and son of R. C. Hoiles, its president, met with representatives of the Union and rejected the proposals, stating that since the respondent paid overtime to its printers, it was opposed as a matter of principle to granting vacations with pay. Hoiles also stated that the respondent would not increase the hourly rate of pay of the printers. The Union then requested the respondent to submit counter-proposals. Sometime later in March, the respondent proposed that there be no discrimination between union and non-union members in the plant;² that it be given "full control" over apprentices, thereby eliminating all restrictions such as those contained in the previous agreements relating to the number of apprentices it could hire and the type of work which they could perform; that the rate of pay of "straight matter operators"³ be decreased from the hourly rate of \$1, provided in the

(2) C. H. Hoiles testified that the respondent meant by this proposal that it desired that the previously established closed shop be abolished.

(3) A "straight matter operator," as the name implies, is a printer qualified only to set up on a typesetting machine straight editorial matter, as distinguished from the more difficult printing, such as setting up advertising matter and market quotations, which are customarily handled by "combinations operators" who are capable of doing any sort of work in a composing room. Duke testified that there were three combination operators in the respondent's employ.

1939 agreement, to 75 cents; and that the workweek be increased to 40 hours. Each of the points set forth in the respondent's proposal meant a detraction from existing conditions of the employees affected—then numbering 22 operators and 3 apprentices.

Upon receipt of the respondent's proposals, the Union requested the assistance of Brown, a former vice president of the International Typographical Union, herein called the ITU, who thereupon came to Santa Ana to conduct negotiations with the respondent relative to a collective bargaining agreement. Brown met with C. H. Hoiles on March 20, 1940, to discuss the respondent's counterproposals. Hoiles stated that the respondent wished to have full control of the work done by the apprentices during their 6-year apprenticeship and specifically that apprentices should be allowed to work on the linotype machines prior to the last year of their 6-year apprenticeships. In reply Brown quoted from the bylaws of the ITU which he contended forbade the inclusion of such provisions in the contract of a subordinate local. Brown likewise opposed the respondent's proposal that the wages of straight-matter operators be set at 75 cents an hour, contending that this was below the minimum rate of \$1 an hour established for all operators under the prior agreement. The parties also discussed, in detail, the Union's proposal regarding vacations with pay. No agreement was reached on any terms at this meeting. On March 27, 1940, Brown and Hoiles met again and continued their discussions.

On April 15, 1940, Brown and Duke, vice president of the Union, met with Hoiles. Brown offered to submit to the Union for ratification a provision that the hourly rate of the operators be increased to \$1.06 an hour, a drop from the original demand of \$1.15 an hour. Hoiles rejected this offer. Hoiles also reiterated his position expressed at the prior conferences that complete control of the apprentices be vested in the respondent, and Brown repeated his previous assertion that such a provision was contrary to the laws of the ITU. Brown then suggested that the matters in dispute between the Union and the respondent be arbitrated.⁴ This proposal was also rejected by Hoiles. Duke then stated that if an agreement was reached, the Union desired it to be reduced to writing and signed by the parties. Hoiles replied that the respondent would not consider signing a contract, that his word was good, and that the Union did not need to fear that he would violate an oral agreement. The meeting then ended with a request by Brown that the respondent submit new counterproposals.

(4) There is some conflict between the testimony of Brown and Hoiles on this point. Brown testified that he requested that "all" matters in dispute between the parties be arbitrated, whereas Hoiles testified that the Union's willingness to arbitrate was restricted to the wage issue. The bylaws of the ITU forbid arbitration of its "general laws" which include provisions relating to apprentices. Under these circumstances, we find that Brown's proposal of arbitration was restricted to those matters which could be arbitrated under the laws of the ITU and that this was the respondent's understanding regarding the proposal.

On May 3, Brown, Duke and C. H. Hoiles met again. The representatives of the Union asked Hoiles if the respondent had any counterproposals to submit and were advised that it did not. Duke then presented a new proposal on behalf of the Union providing for a graduated wage scale and graduated provisions for vacations with pay, as follows:

\$1.03 an hour to September 1, 1940

1.04 an hour from September 1, 1940 to March 1, 1941

1.05 an hour from March 1, 1941 to September 1, 1941

1.06 an hour from September 1, 1941 to March 1, 1942

1.08 an hour from March 1, 1942 to March 1, 1943.

2 days vacation with pay in 1940

3 days vacation with pay in 1941

5 days vacation with pay in 1942

5 days vacation with pay in 1943.

The Union again requested that any agreement reached between the parties be reduced to writing and signed and Hoiles reiterated his previous assertions that the respondent would not sign a contract with the Union. However, Hoiles agreed to take the Union's modified demands upon advisement. This was the second time the Union had lowered its original demands.

On May 16, 1940, the parties met again and C. H. Hoiles rejected the Union's modified proposal, stating that he could not grant a wage increase, no

matter how small, because his other employees would then ask for a similar increase. The Union again requested the respondent to submit counter-proposals but Hoiles stated that it had none.

The Union met that evening and decided to hold in abeyance the entire negotiations with the respondent. No further conferences with the respondent were held until April 1, 1941. However, the terms of the oral agreement, which expired in March 1940, were observed by the respondent until May 1, 1941.

4. The negotiations in 1941

In March 1941, the Union negotiated a series of contracts with commercial job printers in Santa Ana and with three weekly newspapers in the vicinity. These contracts raised the hourly wage rate of the printers involved from \$1 an hour to \$1.07 an hour up to October 1, 1941, and to \$1.12 an hour from October 1, 1941 to October 1, 1942. On April 3, 1941, the Union addressed a letter to the respondent advising it of the aforesaid contract with the printing establishments in the vicinity, and requesting a conference for the purpose of negotiating a collective bargaining agreement for 1941. Pursuant thereto, a meeting was held early in April between representatives of the Union and C. H. Hoiles. Brown notified Hoiles of the contract between the Union and the job printers and weekly newspapers, contended that the wage rate established thereby were the prevailing wage rates in the community, and requested Hoiles to meet the rate. Hoiles stated that while the respondent was financially able to grant the increase requested, it would

not do so because that would necessitate increasing the wages of employees in other departments. Hoiles countered with a proposal that the work-week be increased from 37½ to 40 hours, thus eliminating overtime pay for the extra 2½ hours a week in the event that the printers worked as much as 40 hours during a given week. Brown rejected this proposal but agreed to submit it directly to the union membership. The Union again requested that any agreement reached between the parties be signed and Hoiles maintained the position which he had taken throughout the negotiations that the respondent would not sign a contract with the Union. The apprenticeship question was also discussed at length and both parties took the same position on this issue which they had assumed during the 1940 negotiations.⁵

(5) In its exceptions the respondent contends that the term "full control of apprentices," when interpreted in the light of the evidence in the record, actually meant and was understood by the parties to mean that the respondent merely desired to employ five apprentices, which the ITU constitution would have permitted, instead of three, as provided in the agreement in effect prior to 1940, and that such apprentices be permitted to receive training on typesetting machines prior to the 6th year of their apprenticeship. While it is true that Brown, when asked what position the respondent had taken on the apprentice issue during the conferences in April 1941, testified that Hoiles stated that he "believed that an apprentice should be allowed to work on a machine before his sixth year," there is no evidence in the record that the respondent departed from the position relative to apprentices which it first took at the beginning of negotiations in 1940. Duke and Brown testified that the

On April 18, 1941, the parties met again and the Union notified C. H. Hoiles that its members had rejected the proposed increase of the workweek to 40 hours at straight-time pay. After some discussion on the wage issue the Union requested the respondent to make a new offer but Hoiles declined to do so. Brown then asked Hoiles to fix a date for a further conference. Hoiles replied that the parties could meet again but that it would be useless; that they could talk about the war or the weather, but there would not be an increase in wages. A meeting was nevertheless scheduled for April 26. On that day, as he waited for C. H. Hoiles at the respondent's office, Brown was notified that the meeting would not take place, but that the Union would receive a written statement with regard to the respondent's position.

On April 29, 1941, the Union received a letter from the respondent, dated April 26, which read:

respondent's proposal at that time was for "full control over apprentices both as to the number and as to the work they were doing during their apprenticeship." Likewise, on cross-examination, Hoiles was asked if it were not a fact that the respondent "at all times" insisted that it be given complete control over apprentices "as to the number and the work to be done," and replied in the affirmative. As will be noted, this is the same position reflected by the respondent's letter of April 26, 1941, hereinafter set forth, wherein it is stated, "Also, we are to have complete control of the number and work of our apprentices, as we see fit for efficient operation of our plant." Under these circumstances we find, as did the Trial Examiner, that throughout the negotiations the respondent insisted on "full control" of apprentices, as the term implies.

In accordance with our recent negotiations, the Board of Directors of the Register Publishing Co., Ltd., have authorized me to place this proposition before you in writing.

Namely, we are willing to allow our printers to work forty (40) hours a week, instead of 37½, at the same rate they are now getting \$1 an hour. This will give them a weekly increase of \$2.50, or approximately \$130 a year.

Also, we are to have complete control of the number and work of our apprentices, as we see fit for efficient operation of our plant.

Hoping this meets with your approval, we are,

Very truly yours,

REGISTER PUBLISHING
CO., LTD.

(s) C. H. HOILES

Secretary-Treasurer

Following receipt of the respondent's letter Brown met with Hoiles on the afternoon of April 30, 1941, and urged him to confer further with the Union in an effort to settle the controversy. Hoiles stated that the respondent's final position on the matter was expressed by the letter of April 26. Brown advised Hoiles that the Union could not accept the respondent's proposals.

On the evening of April 30, 1941, the Union met and Brown reported on the negotiations with the respondent. A general discussion then ensued with respect to the respondent's refusal to sign an

agreement with the Union, its insistence on abolishing the closed shop, and the position which it had maintained throughout the negotiations relative to the matter of apprentices and a wage increase.⁶ As a result of this discussion, a strike vote was taken and the Union voted to go out on strike.

5. The strike and the events subsequent thereto

The strike began on the evening of April 30, 1941. All the employees in the composing room went out on strike that evening or the next morn-

(6) The respondent contends that the evidence establishes that the only points in issue between it and the Union when the strike was called were the matters of apprentices and a wage increase. In support of this, the respondent points to the fact that these are the only two matters adverted to in its letter of April 26, 1941. On this point, the evidence discloses, as found above, that at the conference early in April 1941, the Union repeated its previous request that any agreement reached between the parties be signed, and Hoiles stated that the respondent would not sign an agreement. There is no evidence that the respondent at any time thereafter receded from this position. Likewise, there is no evidence that the respondent ever receded from its position taken at the beginning of negotiations relative to the closed shop. On the other hand, the evidence is undisputed that the Union considered that both the matters of a signed agreement and a closed shop were in issue, as well as apprentices and a wage increase, since at the meeting when the strike vote was taken these matters were discussed as points of difference between the Union and the respondent. Under these circumstances we find, as did the Trial Examiner, that throughout the negotiations the respondent did not recede from its position that it would not agree to a closed-shop provision or sign a contract with the Union.

ing with the exception of the foreman and one apprentice.⁷

On April 30, 1941, the night the strike began, C. H. Hoiles called union-member William Bray into his office, and requested him to return to work the next day, promising him \$1.50 an hour for overtime work in addition to his regular wages. Bray replied that the respondent might conclude to execute a contract with the Union within a day or so, in which event he would have incurred the displeasure of the Union by returning to work. According to Bray's testimony, Hoiles replied, "We will not sign up in two or three days and we will never sign with the Union." When Bray explained that he would be fined \$1000 by the Union if he returned to work during the strike, Hoiles offered to take care of any fine imposed by the Union. Bray stated that he "would have to go home and talk it over with my wife." Although Hoiles denied, in part, this conversation, we credit the testimony of Bray, as did the Trial Examiner.

On May 1, 1941, R. C. Hoiles,⁸ the respondent's president, visited Bray's home and spoke to the latter's wife. Hoiles requested Mrs. Bray to use

(7) The foreman was W. A. Lawrence. His name was erroneously included in the complaint as one of the employees refused employment by the respondent because of participation in the strike but was stricken therefrom during the hearing on motion of counsel for the Board.

(8) Although R. C. Hoiles was present during the hearing he did not testify.

her influence to induce her husband to return to work. When Mrs. Bray referred to the possibility of a \$1000 fine if her husband did so, Hoiles offered to post \$1000 in a bank in escrow to provide for that contingency, and, in addition, offered to furnish all the money which she needed for her immediate use. Mrs. Bray refused. During the conversation Hoiles stated that he did not believe in unions and that his self-respect prevented him from taking back the union men.

On May 2 or 3, Duke met C. H. Hoiles and advised him that the Union was still willing to negotiate with the respondent. Hoiles replied that any of the strikers who desired to return to work would be considered individually.

On May 4, 1941, R. C. Hoiles visited Bray at his home and offered him \$40 a week if he would return to work. Bray refused. During the conversation, R. C. Hoiles stated that difficulties with the ITU on a prior occasion had cost him \$8000 and that he would never have anything to do with it.

On May 5, 1941, Clarence Liles, business agent for the Allied Printing Trades, called on C. H. Hoiles and advised him that the stereotypers employed by the respondent would not pass through the picket line established by the Union.⁹ Liles told Hoiles that if the picket line were removed or the printers came back to work, the stereotypers would

(9) The stereotypers have not yet returned to work and their places have been filled by new employees.

return to work. Hoiles replied that, so far as the members of the Union were concerned, they would never come back.¹⁰ On May 5, one striking printer returned to work¹¹ and by May 6, 1941, all the remaining employees who were on strike were replaced by new employees.

During May 1941, a conciliator of the United States Department of Labor conferred separately with the Union and the respondent and urged both to submit the dispute to arbitration. The Union agreed to do so but the respondent refused.

On July 25, 1941, the Union held a meeting and, as a result thereof, addressed the following letter to the respondent:

At a meeting of Santa Ana Typographical Union #579, held on Friday, July 25, the following action was taken by unanimous vote:

The Union requests a meeting with the Santa Register Publishing Company for the purpose of renewing negotiations and reaching an

(10) This finding is predicated upon the testimony of Liles and Edward Saleh, a stereotyper present at the conferences. C. H. Hoiles testified, however, that the statement which he made was, "What if they never come back?" We credit, as did the Trial Examiner, the Liles-Saleh version of the statement.

(11) The printer who returned to work was C. C. Thrasher. His name was erroneously included in the complaint but was stricken therefrom during the hearing on motion of counsel for the Board.

agreement for the reinstatement of the former union employees of The Santa Daily Register.

Yours truly,

SANTA ANA TYPO-
GRAPHICAL UNION

579

(s) J. W. JONES

President

(s) O. E. FISHER

Secretary

On August 2, 1941, the respondent replied as follows:

We acknowledge receipt of your letter of recent date which advises us of the action of your Union as of July 25th last.

The Santa Ana Register has never refused to negotiate with you and will not refuse to negotiate with you now. Before sitting down with you, however, we should point out that since your members went out on strike on May 1st last, nearly three months ago, it has been necessary for us to employ others to take the places of those who went out on strike.

These new employees have now become a part of the establishment and we do not feel, in fairness to them, that we can replace them now. Furthermore, shortly after your members went out on strike, we offered, through your Mr. Duke then local President, to take back any of your members who were out on strike, whom we believe could be utilized if they re-

turned to The Register because of vacancies we had at that time. These men did not return, however, and it was necessary to fill the vacancies by employing others who are now a part of our staff.

On behalf of the Management I also feel it necessary to indicate to you that there has been no change in our situation since the Union and the Management found it impossible to get together on the questions of increased wages and apprentices.

If you wish to sit down with us, in view of what I have written, the Management will certainly not refuse to confer with you. We think it only fair, however, that before doing so you should be given our attitude, as outlined above.

Sincerely,

REGISTER PUBLISHING
CO., LTD.

By (s) C. H. HOILES

There were no further conferences or communications between the Union and the respondent after the above letter. The strike was still in progress at the time of the hearing and none of the 18 striking employees listed in Appendix A, attached hereto, had returned to work.

6. Concluding Findings

The complaint alleges that the respondent refused to bargain in good faith with the Union on March 1, 1940, and at all times thereafter, and that the strike which began on April 30, 1941, was

caused by these unfair labor practices on the part of the respondent. The respondent contends that it has bargained in good faith with the Union in an effort to reach an agreement but that an impasse was reached on or about April 30, 1941, because of the failure of the parties to agree regarding the particular terms of such an agreement and that the strike was called by the Union as a result thereof.

It is clear, however, from the facts recited above, that the respondent has failed and refused to bargain collectively with the Union throughout the period of negotiations. The refusal of the respondent to reduce any agreement which might be reached to a written signed agreement constituted a refusal to bargain.¹² Moreover, the duty imposed by the Act "encompasses an obligation to enter into discussion with an open and fair mind and with a sincere purpose to find a basis of agreement concerning the issues presented . . ."¹³ Although

(12) Matter of H. J. Heinz Co. and Canning and Pickle Workers, Local Union, etc., 10 N.L.R.B. 963 aff'd 311 U. S. 514.

(13) Matter of Singer Manufacturing Co. and United Electrical, Radio & Machine Workers of America, Local No. 917, affiliated with the Congress of Industrial Organizations, 24 N.L.R.B. 444, 464, enf'd as mod. Singer Mfg. Co. v. National Labor Relations Board, 119 F. (2d) 171 (C.C.A. 7), cert. den. 313 U. S. 595; Globe Cotton Mills v. National Labor Relations Board, 103 F. (2d) 91, (C. C.A. 5) enf'g as mod. Matter of Globe Cotton Mills and Textile Workers Organizing Committee, 6 N.L. R.B. 461; National Labor Relations Board v. Gris-

the Act does not require that an employer agree to any particular terms and failure to conclude an agreement may not alone establish a refusal to bargain, nevertheless, such matters may be relevant, in conjunction with the entire course of conduct, in evaluating the intent of the parties. In view of the past relationship between the parties, including the closed shop, apprentice control, and the payment of prevailing rates, the respondent's insistence, without any justification shown, that the Union surrender benefits it had gained, is the very antithesis of any desire to reach a mutually acceptable agreement. The respondent's refusal to arbitrate the matters in dispute, establishes that it was not concerned with the merits of the substantive issues but was determined rather to deny to the Union the benefits of a collective agreement. That this was its motive is established by the respondent's anticipatory refusal to reduce to writing and make contractually binding any agreement which might be reached. Further proof is found in the admission, during the strike, of *H. C. Hoiles* that the respondent would "never sign with the Union" and of *R. C. Hoiles* that he "did not believe in unions" and "would never have anything to do with (the ITU)." Finally, the respondent's refusal to bar-

wold Mfg. Co., 106 F. (2d) 713 (C.C.A. 3) enf'g Matter of Griswold Mfg. Co. and Amalgamated Association of Iron, Steel and Tin Workers etc., 6 N.L.R.B. 298; National Labor Relations Board v. Westinghouse Air Brake Company, 120 F. (2d) 1004 (C.C.A. 3) enf'g as mod. Matter of Westinghouse Air Brake Company and United Electrical, Radio and Machine Workers etc., 25 N.L.R.B. 1312.

gain during the strike by requiring that reinstatement of the strikers be considered on an "individual" basis and by removing the basis for negotiations by permanently replacing the union members, conclusively establishes the respondent's determination to evade its statutory obligation.

We find that on March 1, 1940, and at all times thereafter, the respondent refused to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit in respect to rates of pay, wages, hours of work, and other conditions of employment, and that by such refusal, and by the statements made to Bray and his wife by C. H. and R. C. Hoiles and the inducements offered by the respondent to persuade Bray to cease his concerted activity and abandon the Union, the respondent thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. We further find that the strike which began on April 30, 1941, was the result of the respondent's refusal to bargain with the Union and that it was prolonged thereafter because of the continued refusal of the respondent to bargain with the Union.

C. Refusal to reinstate the strikers

The complaint alleges that on or about July 29, 1941, and at all times thereafter, the respondent discriminated with regard to the hire and tenure of employment of the employees listed in Appendix A, attached hereto, because of their membership in the Union and participation in the strike. Since, as

found above, the striking employees ceased work as a consequence of the respondent's unfair labor practices, they remained employees within the meaning of the Act and the respondent was under a duty not to discriminate in regard to their hire and tenure of employment.

As shown above, the Union's letter of July 25, 1941, requested a meeting with the respondent for the purpose of "reaching an agreement for the reinstatement" of the striking employees. In its reply of August 2, 1941, the respondent stated, in substance, that because the striking employees had refused to return to work their positions had been permanently filled by new employees who would not be displaced to afford positions for them. Thus, by this letter the respondent put the Union upon notice that the striking employees were no longer considered its employees and in fact, had been discharged and replaced by new employees. In discharging these employees, the respondent unlawfully discriminated in regard to their hire and tenure of employment.¹⁴ By its letter of August 2, 1941, advising the Union of this action, the respondent precluded any possibility of the striking employees obtaining reemployment and thereby relieved them of the necessity of making formal ap-

(14) *Black Diamond Steamship Corp. v. National Labor Relations Board*, 94 F. (2d) 875 (C.C. A. 2) cert den. 304 U. S. 579; *Great Southern Trucking Co. v. National Labor Relations Board*, 127 F. (2d) 180 (C.C.A. 4); *El Paso Electric Co. v. National Labor Relations Board*, 119 F. (2d) 581 (C.C.A. 5).

plication, since such application, under the circumstances, would have been a "useless gesture."¹⁵

We find that the respondent on August 2, 1941, and thereafter, discriminated against the striking employees listed in Appendix A, thereby discouraging membership in the Union and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The effect of the unfair labor practices upon commerce

We find that the activities of the respondent set forth in Section III, above, occurring in connection with the operations of the respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Having found that the respondent has engaged in certain unfair labor practices, we shall order it to cease and desist from such practices and to take certain affirmative action designed to effectuate the

(15) Matter of Eagle-Picher Mining & Smelting Company, a corporation, and Eagle-Picher Lead Company, a corporation, and International Union of Mine, Mill & Smelter Workers, Locals Nos. 15, 17, 107, 108, and 111, 16 N.L.R.B. 727, mod. and enf'd, Eagle-Picher Mining & Smelting Company v. National Labor Relations Board, 119 F. (2d) 903 (C.C.A. 8).

policies of the Act. We have found that the respondent refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate bargaining unit. We shall, therefore, order the respondent, upon request, to bargain with the Union as such representative.

We have found further that the respondent discriminated against the employees listed in Appendix A, attached hereto, because they had gone on strike in protest against the respondent's unfair labor practices. We shall, therefore, order the respondent to offer them immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges.¹⁶ The reinstatement shall be effected in the following manner: All employees hired after April 30, 1941, the date of the commencement of the strike, shall, if necessary

(16) Our order requiring reinstatement and back pay is based not only upon the fact that such an order is appropriate to remedy the respondent's unfair labor practices in discharging these employees but also, and independently, upon the ground that since the strike was caused and prolonged by the respondent's refusal to bargain collectively, an order requiring reinstatement with back pay is appropriate to effectuate the policies of the Act. *National Labor Relations Board, v. American Manufacturing Co.*, 106 F. (2d) 61 (C.C.A. 2) *aff'd* 309 U. S. 629; *National Labor Relations Board, v. Acme-Evans Co.* (C.C.A. 7) decided June 15, 1942; *Matter of McKaig Hatch Inc. and Amalgamated Association of Iron, Steel, and Tin Workers etc.*, 10 N.L.R.B. 33; *Matter of Western Felt Works, a corporation and Textile Workers Organizing Committee, etc.*, 10 N.L.R.B. 407.

to provide employment for those who are to be reinstated, be dismissed. If, however, by reason of a reduction in force, there are not sufficient jobs immediately available for the remaining employees, including those who are to be reinstated, all available positions shall be distributed among such remaining employees in accordance with the respondent's usual method of reducing its force, without discrimination against any employee because of his union affiliation or activities, following a system of seniority to such extent as has heretofore been applied in the conduct of the respondent's business. Those employees thus laid off, for whom no employment is immediately available, shall be placed upon a preferential list prepared in accordance with the principles set forth in the previous sentence and shall, thereafter, in accordance with such list, be offered employment as it becomes available and before other persons are hired for such work. We will further order that the respondent make whole the employees listed in Appendix A, for any loss of pay they may have suffered by reason of the respondent's discrimination against them by payment to each of them of a sum of money equal to the amount which he would normally have received as wages from August 2, 1941, to the date of the respondent's offer of reinstatement, or placement, on a preferential list, less his net earnings,¹⁷ if any, during such period.

(17) By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. Santa Ana International Typographical Union No. 579 is a labor organization, within the meaning of Section 2 (5) of the Act.

2. All employees in the composing room of the respondent's Santa Ana plant, at all times material herein, constituted and now constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. Santa Ana Typographical Union No. 579 was on March 1, 1940, and at all times since has been the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. By refusing to bargain collectively with Santa Ana Typographical Union No. 579 as the exclusive representative of its employees in the appropriate unit, the respondent has engaged in

obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N.L.R.B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. National Labor Relations Board*, 311 U. S. 7.

and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

5. By discriminating in regard to the hire and tenure of employment of the employees listed in Appendix A, thereby discouraging membership in the Union, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

6. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaged in unfair labor practices, within the meaning of Section 8 (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Register Publishing Co., Ltd., Santa Ana, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Santa Ana International Typographical Union No. 579 or any other labor organization of its employees by discharging, refusing to reinstate, or in any other manner discriminating in regard to hire and ten-

ure of employment or any term or condition of employment of any of its employees;

(b) Refusing to bargain collectively with Santa Ana International Typographical Union 579 as the exclusive representative of all employees in the composing room of the respondent's Santa Ana plant;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right of self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Santa Ana International Typographical Union No. 579 as the exclusive representative of all the employees in the composing room of the respondent's Santa Ana plant in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Offer to the employees listed in Appendix A, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges, such offer to be effected in the manner

provided for in the section entitled "The remedy", placing those employees for whom no employment is immediately available upon a preferential list in the manner therein set forth, and thereafter offer them employment as it becomes available;

(c) Make whole the employees listed in Appendix A for any loss of pay they may have suffered by reason of respondent's discrimination against them by payment to each of them of a sum of money equal to that which he normally would have earned as wages from August 2, 1941, to the date of the offer of reinstatement, or placement on a preferential list, less his net earnings during said period;

(d) Post immediately in conspicuous places at its Santa Ana plant and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a), (b), and (c) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a), (b), and (c) of this Order; and (3) that its employees are free to become or remain members of Santa Ana International Typographical Union No. 579, and the respondent will not discriminate against any employees because of membership or activity in that organization;

(e) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

Signed at Washington, D. C., this 7 day of October 1942.

WM. M. LEISERSON

Member

GERARD D. REILLY

Member

NATIONAL LABOR

[Seal]

RELATIONS BOARD

APPENDIX A

A. L. Berkland	G. L. Hawk
F. L. Berkland	J. W. Jones
C. W. Brakeman	L. C. McKee
William O. Bray	J. W. Parkinson
C. J. Bronzen	J. H. Patison
Charles Clayton	J. A. Sherwood
G. W. Duke	V. C. Shidler
E. W. Ellis	J. E. Swanger
W. H. Fields	E. Y. Taylor

N.L.R.B. Docketed Oct. 7, 1942.

[Title of Board and Cause.]

AFFIDAVIT AS TO SERVICE

District of Columbia—ss.

I, Robert B. Green, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 7th day of October, 1942, I mailed postcard, bearing gov-

ernment frank, by registered mail, a copy of the Decision and Order to the following named persons, addressed to them at the following addresses:

69798

Santa Ana International Typographical
Union No. 579

Att: J. W. Jones
837 N. Garnsey Street
Santa Ana, California

69799

Seth R. Brown
447 I. W. Hellman Bldg.
Los Angeles, California

69800

Register Publishing Company, Ltd.
Santa Ana, California

69801

Messrs. Willis Sargent and Paul Hart
433 South Spring Street
Los Angeles, California

ROBERT B. GREEN

Subscribed and sworn to before me this 7th day
of October, 1942.

[Seal]

KATHRYN B. HARRELL

Notary Public, D. C.

My Commission expires March 1, 1947.

[Return Receipts attached.]

[National Labor Relations Board Oct. 7, 1942.
Docketed # 3.]

In the United States Circuit Court of Appeals
for the Ninth Circuit
No. 10364.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

REGISTER PUBLISHING CO., LTD.,
Respondent.

PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR RE-
LATIONS BOARD

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, c. 372, 29 U. S. C. § 151 et seq.), respectfully petitions this Court for the enforcement of its order against respondent, Register Publishing Co., Ltd., Santa Ana, California, and its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Register Publishing Co., Ltd., and Santa Ana International Typographical Union No. 579, Case No. C-2225."

In support of this petition, the Board respectfully shows:

(1) Respondent is a California corporation, engaged in business in the State of California, within this judicial circuit, where the unfair labor practices occurred. This Court therefore has jurisdic-

tion of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, and including, without limitation, complaint and notice of hearing, respondent's answer to complaint, hearing for the purpose of taking testimony and receiving other evidence, Intermediate Report, respondent's exceptions thereto, and order transferring case to the Board, the Board, on October 7, 1942, duly stated its findings of fact, conclusions of law and issued an order directed to the respondent, and its officers, agents, successors, and assigns. The aforesaid order provides as follows:

ORDER

Upon the basis of the above findings of fact and conclusions of law and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Register Publishing Co., Ltd., Santa Ana, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Santa Ana International Typographical Union No. 579 or any other labor organization of its employees by discharging, refusing to reinstate, or in any other manner discriminating in regard to hire and tenure of employment or any term or con-

dition of employment of any of its employees;

(b) Refusing to bargain collectively with Santa Ana International Typographical Union 579 as the exclusive representative of all employees in the composing room of the respondent's Santa Ana plant;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right of self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Santa Ana International Typographical Union No. 579 as the exclusive representative of all the employees in the composing room of the respondent's Santa Ana plant in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Offer to the employees listed in Appendix A, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges, such offer to be effected in the manner provided for in the sec-

tion entitled "The remedy", placing those employees for whom no employment is immediately available upon a preferential list in the manner therein set forth, and thereafter offer them employment as it becomes available;

(c) Make whole the employees listed in Appendix A for any loss of pay they may have suffered by reason of respondent's discrimination against them by payment to each of them of a sum of money equal to that which he normally would have earned as wages from August 2, 1941, to the date of the offer of reinstatement, or placement on a preferential list, less his net earnings during said period;

(d) Post immediately in conspicuous places at its Santa Ana plant and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a), (b), and (c) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a), (b), and (c) of this Order; and (3) that its employees are free to become or remain members of Santa Ana International Typographical Union No. 579, and the respondent will not discriminate against any employees because of membership or activity in that organization;

(e) Notify the Regional Director for the Twenty-first Region in writing within ten (10)

days from the date of this Order what steps the respondent has taken to comply herewith.

(3) On October 7, 1942, the Board's decision and order was served upon respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Messrs. Willis Sargent and Paul Hart, respondent's attorneys in Los Angeles, California.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony and evidence and the proceedings set forth in the transcript, and the order made thereupon set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board and requiring respondent, and its officers, agents, successors, and assigns to comply therewith.

NATIONAL LABOR RELATIONS BOARD

By ERNEST A. GROSS

Associate General Counsel

Dated at Washington, D. C., this 3rd day of February, 1943.

APPENDIX A.

A. L. Berkland	G. L. Hawk
F. L. Berkland	J. W. Jones
C. W. Brakeman	L. C. McKee
William O. Bray	J. W. Parkinson
C. J. Bronzen	J. H. Patison
Charles Clayton	J. A. Sherwood
G. W. Duke	V. C. Shidler
E. W. Ellis	J. E. Swanger
W. H. Fields	E. Y. Taylor

District of Columbia—ss.

Ernest A. Gross, being first duly sworn, states that he is Associate General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

ERNEST A. GROSS

Associate General Counsel

Subscribed and sworn to before me this 3rd day of February, 1943.

[Seal]

JOSEPH W. KULKIS

Notary Public, District of
Columbia

My Commission expires April 15, 1947.

[Endorsed]: Filed Feb. 9, 1943. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

ANSWER OF RESPONDENT REGISTER
PUBLISHING CO., LTD., TO PETITION
FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS
BOARD

To the Honorable, The Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Register Publishing Co., Ltd., Respondent in the above entitled matter, in accordance with Section 10(e) of the National Labor Relations Act (49 Stat. 449, Chapter 372, approved July 5, 1935), hereby answers the Petition presented to this Honorable Court for the enforcement of a certain Order of the National Labor Relations Board, hereinafter referred to as the "Board."

In answer to said Petition to this Honorable Court, Respondent respectfully admits, denies and alleges as follows:

(1) Admits the allegations contained in Paragraph (1) of said Petition to the extent that Respondent is a California corporation engaged in business in the State of California, within this judicial district, but denies the allegation that it committed any unfair labor practices, or that any unfair labor practices occurred by reason of Respondent or its operations, and further denies that this Court has jurisdiction of or over Respondent, or this Petition, by virtue of Section 10(e) of the National Labor Relations Act, or otherwise, for the

reason that the activities and operations of Respondent, whether as set forth by the Board in the Order sought to be enforced in this proceeding, or otherwise, do not have a close, intimate or substantial relation to trade, traffic or commerce among the several states, and do not lead, or tend to lead, to labor disputes burdening or obstructing commerce, or the free flow of commerce.

(2) Admits the allegations contained in Paragraph (2) of said Petition to the extent that proceedings were had in the said manner before the Board, and that on October 7, 1942, the Board did issue and direct its Order to Respondent in the language set forth in said Paragraph (2) of said Petition, but respondent denies that the Board had, or has, jurisdiction over Respondent, either for the purpose of proceeding against Respondent, or for the purpose of issuing or directing its Order to Respondent, or otherwise, in any manner whatsoever, for the reasons set forth in Paragraph (1) above of Respondent's answer to the Board's Petition.

(3) Admits the allegations of Paragraph (3) of said Petition.

(4) Admits the allegations of Paragraph (4) of said Petition, except that Respondent denies that the Board had, or has, jurisdiction over Respondent to so proceed under Section 10(e) of the National Labor Relations Act, or otherwise, as it is seeking to proceed by its Petition to this Court.

(5) In further answering the Board's Petition.

Respondent respectfully alleges that the Board's Findings of Fact as to those matters set forth in its Order for which it seeks enforcement from this Court, are not supported by the substantial and material evidence introduced and received at the trial; and that its Findings of Fact are inadequate, incomplete and insufficient in that important facts which are conclusively established by substantial and material evidence in the case, have been disregarded or ignored by the Board; and that its Conclusions of Law pertaining to the matters contained in its said Order, and the provisions set forth in its said Order, for which it seeks enforcement from this Court, are invalid and void as to Respondent, and based on improper, insufficient, and unsupported Findings of Fact, unwarranted by the substantial, material evidence contained in this case.

(6) Further answering the Board's Petition, Respondent respectfully alleges that it set forth in its Exceptions to the Intermediate Report of the Examiner who presided at the hearing, its objections to certain of his Findings, later adopted by the Board, to certain of his Conclusions of Law, also adopted by the Board, and certain of his Recommendations, later adopted by the Board, all as portions of the Order which it now seeks to enforce; that the Board erroneously, arbitrarily and in abuse of its discretion, overruled, disregarded and failed to take into consideration certain of Respondent's Exceptions to the said Intermediate Report of the Examiner; and that since the said Exceptions are part of

the record in this case, and are to be printed as part of the transcript record herein, Respondent hereby incorporates each and every objection therein contained insofar as applicable to the Order of the Board sought to be enforced herein and to the Findings of Fact and Conclusions of Law upon which the said Order is purported to be based, and as fully and completely as if entirely set forth herein.

(7) In further answering the Board's Petition, Respondent alleges that the said Order of the Board, and each and every part thereof, insofar as directed to compliance by Respondent, is invalid and void for the following reasons:

(a) That Paragraphs (1) and (2) of the said Order as drawn, if enforced, would deprive Respondent and its officers, agents, successors or assigns, of their freedom of speech and the freedom of press under Amendment 1 to the Constitution of the United States.

(b) That Paragraph (2) of said Order, as drawn, if enforced, would deprive Respondent of the protection of Amendment 5 to the Constitution of the United States, in that the National Labor Relations Act when construed under the requirement of the due process clause of said Amendment 5 to the Constitution of the United States, does not and could not authorize the Board to order and require Respondent to post notices either admitting, stating or implying that it had heretofore engaged in any unfair labor practices, or that it would cease and desist from engaging in any such unfair labor practices in the future.

Wherefore: Respondent prays that the Petition herein be dismissed, and that the Board's order, insofar as directed to Respondent, be set aside, and the Respondent be given such other and further relief in the premises as to the Court may seem just and proper.

Dated: This 19th day of February, 1943.

REGISTER PUBLISHING
CO., LTD.,

By C. H. HOILES

Treasurer

WILLIS SARGENT

Attorney for Respondent

610 Title Insurance Bldg.,

433 S. Spring Street,

Los Angeles, California

Telephone: MUtual 6171

(Duly verified.)

[Endorsed]: Filed Feb. 20, 1943. Paul P.
O'Brien, Clerk.

ORDER TO SHOW CAUSE

CCA No. 10364

United States of America—ss.

THE PRESIDENT OF THE UNITED STATES
OF AMERICA

To Register Publishing Company, Ltd., Santa Ana,
California, and Santa Ana International Typo-
graphical Union No. 579, Att. J. W. Jones, 837
N. Garnsey St., Santa Ana, California,

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 9th day of February, 1943, a petition of the National Labor Relations Board for enforcement of its order entered on October 7, 1942, in a proceeding known upon the records of the said Board as

“In the Matter of Register Publishing Co., Ltd., and Santa Ana International Typographical Union No. 579, Case No. C-2225.”

and for entry of a decree by the United States Circuit Court of Appeals for the Ninth Circuit, was filed in the said United States Circuit Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Circuit Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Harlan Fiske Stone, Chief Justice of the United States, this 9th day of February in the year of our Lord one thousand, nine hundred and forty-three.

[Seal] PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

Marshal's Civil Docket No. 25347 Vol. 46 Page 9.

RETURN ON SERVICE OF WRIT

United States of America,
Southern District of California—ss.

No. 25347

I hereby certify and return that I served the annexed Order to show cause and copies of petition for enforcement order on the therein-named Register Publishing Company and Santa Ana International Typographical Union No. 579 by handing to and leaving a true and correct copy thereof with C. H. Hoiles, Sec.-Treas. Register Publishing Co. & J. W. Jones, Past Pres. Santa Ana International Typographical Union #579 personally at Santa Ana & Norwalk in said District on the 11th day of February, 1943.

ROBERT E. CLARK

U. S. Marshal

By THOS. R. KEEFE

Deputy

[Endorsed]: Filed Mar. 1, 1943. Paul P. O'Brien, Clerk.

Before the National Labor Relations Board
Twenty-first Region
Case No. XXI-C-1737

In the Matter of:

REGISTER PUBLISHING COMPANY, LTD.,

and

SANTA ANA INTERNATIONAL TYPO-
GRAPHICAL UNION, LOCAL NO. 579.

TRANSCRIPT OF TESTIMONY

Council Chambers, City Hall,
Santa Ana, California,
Thursday, May 7, 1942.

The above-entitled matter came on for hearing,
pursuant to notice, at 10:30 o'clock a. m.

Before:

WILL MOSLOW, Trial Examiner.

Appearances:

Charles M. Ryan,

Attorney for the National Labor
Relations Board.

Willis Sargent and Paul Hart,

433 South Spring Street, Los Angeles,
California, appearing for the Register
Publishing Company, Ltd.

Seth R. Brown,

447 I. W. Hellman Building, Los Angeles,
California, Special Representative for
the Santa Ana International Typo-
graphical Union, Local 579. [1*]

SETH R. BROWN,

called as a witness by and on behalf of the National
Labor Relations Board, having been first duly
sworn, was examined and testified as follows:

Direct Examination

By Mr. Ryan:

Q. State your full name, please, Mr. Brown.

A. Seth R. Brown.

Q. What is your address?

A. 447 I. W. Hellman Building, Los Angeles.

Q. That is your office address?

A. Yes, sir.

Q. What is your occupation?

A. I am a representative of the International
Typographical Union.

Q. In what particular capacity is that repre-
sentation?

A. Well, I have charge of their affairs in the
southwest and Southern California, Arizona and
Nevada.

* Page numbering appearing at top of page of original Reporter's
Transcript.

(Testimony of Seth R. Brown.)

Q. How long have you held that position, Mr. Brown?

A. This particular position I have held for two years. [10]

Q. Since 1940?

A. Yes, sir; since the first of March, 1940.

Q. Prior to that had you any connection with the International Typographical Union?

A. Yes, sir. I was first vice-president of the International Typographical Union from 1924 to 1928. I was also a trustee of the Union Printers Home for one term.

Q. Where is that?

A. In Colorado Springs, Colorado.

Q. Between 1928 and March 1, 1940, what was your occupation?

A. I was director of the State Employment Agencies under Governor Young for three years, from 1928 to 1931.

Q. Governor Young is from what state?

A. The State of California; and after that I was employed in the composing room of the Los Angeles Examiner up until the first of March, 1940.

Q. When did you first become associated with the International Typographical Union in any capacity? Your very first association?

A. You mean my membership?

Q. Yes.

A. I joined the organization in November, 1896.

Q. And prior to your obtaining the vice-presi-

(Testimony of Seth R. Brown.)

dency that you say you obtained in early 1920, I believe? A. Yes, 1924. [11]

Q. Had you held any other executive position with the union prior to that?

A. Not with the International. I was local president of the Los Angeles Typographical Union from 1914 to 1924.

Q. Are you familiar with the history of the International Typographical Union?

A. Well, more or less, yes, sir, over a period of years.

Q. Can you give us a brief outline as to the coming into existence of the International Typographical Union?

Mr. Sargent: Well, I have no desire to object to anything that counsel wants to bring in that has a bearing on the case, but we have already admitted in our answer that the Typographical Union is a proper labor organization, and I don't believe it is going to help us much to go into the details of its organization.

Trial Examiner Moslow: What is the purpose of this line of questioning, Mr. Ryan?

Mr. Ryan: Mr. Examiner, certain issues with respect to the allegation that the company refused to bargain in good faith which, in order to be properly understood, will have to have this information for a background. At least that is my intention, and I insist on the right to bring it out. If, in the mind of the Examiner and opposing counsel, at the end of this little examination, it is found

(Testimony of Seth R. Brown.)

to be not revelant, I say at that time there can be a motion to [12] strike.

Mr. Sargent: Mr. Examiner, the issue here is whether or not this company, respondent, did actually bargain in good faith. The past history of the union has nothing to do with the question.

Trial Examiner Moslow I will overrule the objection and receive this line subject to connection.

Mr. Sargent: It is understood my objection covers the whole line of questioning?

Trial Examiner Moslow: You may have a continuing exception and objection to the entire line.

Mr. Ryan: Read the question, please.

(The question was read.)

The Witness: The International Typographical Union was organized in 1852 at Cincinnati. Later on, in 1869, the name was changed from the National Typographical to the International Typographical Union, and the jurisdiction extended to take in the Dominion of Canada. Previous to that it had been a national organization.

The International Typographical Union, of course, has affiliated local units, and these units make up in the aggregate very nearly 1,000 local units throughout the United States and Canada, and one in Hawaii.

I don't know, Mr. Examiner, whether you want me to go ahead with the general outline, or you want to ask questions. [13]

Mr. Ryan: I will ask you questions.

(Testimony of Seth R. Brown.)

Q. (By Mr. Ryan): What employees does the jurisdiction of the International Typographical Union extend to?

A. Well, to printers and mailers.

Q. In what industry?

A. In the printing industry.

Q. Since the International Typographical Union came into existence has it secured contracts with substantial numbers of companies engaged in the printing industry throughout the United States?

Mr. Sargent: So stipulated.

Q. (By Mr. Ryan): Can you give us——

Trial Examiner Moslow: Just one second. I don't understand by virtue of a stipulation that you can prevent a counsel from asking his questions. Are you willing to take that stipulation in lieu of information, or do you want to proceed?

Mr. Ryan: I will take that stipulation as an answer to that question.

Trial Examiner Moslow: Very well; so stipulated.

Q. (By Mr. Ryan): Can you give us an approximate idea as to the number of contracts?

Trial Examiner Moslow: Mr. Ryan, can't you frame your questions more precisely, so that they will get to the issue? I don't think the entire history of the organization is going to be relevant. No one disputes that it is a labor organiza- [14] tion.

Q. (By Mr. Ryan): Well, are there certain provisions in the contracts which you have throughout the industry that are uniform?

(Testimony of Seth R. Brown.)

A. Yes, many of those—the mandatory laws of the International Typographical Union, in fact, all of them, are incorporated in standard contracts. Especially in smaller unions and smaller offices the contracts are more standard, but in the larger offices, of course, there are a number of working conditions that are not mandatory on behalf of the typographical union, which are negotiated.

Mr. Ryan: Will you mark this for identification as Board's Exhibit 3?

(Thereupon the document referred to was marked as Board's Exhibit No. 3, for identification.)

Q. (By Mr. Ryan): Mr. Brown, I show you a document marked Board's Exhibit 3 for identification which is entitled "Book of Laws of International Typographical Union", in effect January 1, 1942, and ask you whether or not those are the laws of the International Typographical Union now in effect? A. Yes, sir.

Mr. Sargent: What was the date on that, please?

The Witness: 1942; in effect January 1, 1942.

Mr. Ryan: I offer this as Board's Exhibit 3 in evidence.

Mr. Sargent: I object to it on the ground that the [15] issues of this case were formed prior to January 1, 1942, and that a book which came into effect in that year, January 1, 1942, would not be applicable to the issues of this case.

Trial Examiner Moslow: What is your point, Mr. Ryan?

(Testimony of Seth R. Brown.)

Mr. Ryan: Well, my point is to establish the rules and regulations by which the international union is now in existence, and guided by, and governed by, and, so far as Mr. Sargent's objection, I propose to introduce the previous set of by-laws also. Do you have them with you, Mr. Brown?

The Witness: I haven't them with me, Mr. Ryan, but they can be obtained.

Mr. Ryan: Can you get them for us by noon?

The Witness: I think so. I am sure the local union has a copy of last year's laws.

Trial Examiner Moslow: I will reserve my ruling meanwhile on Board's Exhibit 3 for identification.

Q. (By Mr. Ryan): Mr. Brown, in your present capacity as a representative of the Typographical Union have you had any occasion to represent or deal in behalf of the Santa Ana International Typographical Union here in Santa Ana, in so far as relations between that union and the Register Publishing Company, Ltd. is concerned?

Mr. Sargent: I have no objection to his giving specific dates or instances. I take it all you want to do now is to make it an introductory question. Is that correct? [16]

Mr. Ryan: That is right.

Mr. Sargent: All right.

The Witness: The Santa Ana International Typographical Union requested the president of the International Typographical Union to assign a

(Testimony of Seth R. Brown.)

representative here to assist the local union in its scale negotiations.

Q. (By Mr. Ryan): When was that?

A. That was in March.

Trial Examiner Moslow: What year?

The Witness: In 1940. It might have been the last of February or the first of March, 1940.

Q. (By Mr. Ryan): Were you assigned to this Santa Ana International Typographical Union, Local 579, pursuant to that? A. Yes, sir.

Q. What was the occasion of your coming here to represent the Santa Ana International Typographical Union?

Mr. Sargent: I have no objection to his testimony providing he knows. I don't want any hearsay as to what other union people have told him.

Trial Examiner Moslow: Will you reframe the question, Mr. Ryan?

Q. (By Mr. Ryan): Do you know of your own knowledge the reasons for your coming here to represent the Santa Ana International Typographical Union? [17] A. Yes, sir.

Q. What were they?

Mr. Sargent: Unless the management, the Santa Ana Register, was in some way present or was notified of these reasons, they wouldn't be binding upon respondent, and they would be hearsay. I am therefore going to ask that the testimony be limited to such things as are competent evidence, having come to the attention of the respondent.

(Testimony of Seth R. Brown.)

Trial Examiner Moslow: I will sustain your objection. Reframe your question.

Q. (By Mr. Ryan): Mr. Brown, you have already testified that you came to Santa Ana in March, 1940, having been designated to represent the Santa Ana International Typographical Union, by the president of the International. Is that right?

A. Yes, sir.

Q. Did you come here to Santa Ana pursuant to that? A. Yes, sir.

Q. After you got to Santa Ana, did you proceed to represent the Santa Ana International Union in any dealings with the Register Publishing Company, Ltd.?

A. I proceeded to cooperate with the local scale committee of the Typographical Union, assist them.

Q. In what respect?

A. In negotiations with the management of the Register in reference to a new contract. [18]

Mr. Sargent: Mr. Ryan, I don't want to object to anything that will impede your testimony. I would like to have specific things brought out here, rather than general conclusions, if I may. In other words, tell what he did, and then we can draw conclusions as to whether he did or didn't assist, or what he did.

Q. (By Mr. Ryan): Had these negotiations referred to by you commenced before you came to Santa Ana?

A. One meeting had been held and that was the reason for my being brought into the case.

(Testimony of Seth R. Brown.)

Mr. Sargent: I ask that that go out as being incompetent evidence.

Trial Examiner Moslow: I will let it stand, but please confine your answers to the question, Mr. Brown.

Q. (By Mr. Ryan): As a representative of the Santa Ana International Union, did you attend any conference with representatives of the Register Publishing Company in March, 1940?

A. Yes, sir.

Q. When did you first attend such a conference?

A. Well, March 20th and 27th, I believe was the two dates in that month.

Q. The first one was on March 20th?

A. Yes, sir.

Trial Examiner Moslow: 1940? [19]

The Witness: 1940.

Q. (By Mr. Ryan): Where was that meeting held?

Mr. Sargent: Just a minute, please. The Board has charged here that certain unfair labor practices took place in the year 1940. Is it your idea, Mr. Ryan, to show that those are connected with the situation that developed in 1941?

Mr. Ryan: Yes.

Mr. Sargent: Unless there's a connecting link. in view of the fact the evidence will indicate that there was a verbal contract in effect during the year 1940, and that the break-off of relations did not come until 1941, I ask the testimony be limited to such time as the negotiations which ended

(Testimony of Seth R. Brown.)

in the economic action in 1941. We do not go back to 1940 as a result of which there was an agreement between the union and the respondent.

Trial Examiner Moslow: I do not understand your contention. Was there a contract signed in 1940 between the parties?

Mr. Sargent: There was no contract signed, but there were operations under a verbal agreement, as I understand it, in 1940.

Trial Examiner Moslow: Do you object to any evidence on unfair labor practices prior or after the contract? What is your point? Or, is it prior to the execution of this [20] oral agreement?

Mr. Sargent: I think everything that has taken place prior to the verbal agreement was merged in the agreement.

Trial Examiner Moslow: If that is your objection, it is overruled.

Q. (By Mr. Ryan): Prior to March 1, 1940, do you know of your own knowledge whether or not the Santa Ana International Typographical Union, Local 579, had had a contract agreement with the Register Publishing Company, Ltd.?

A. They had an agreement, yes, sir, an oral agreement.

Q. Do you know what employees were covered by that agreement?

A. All employees in the composing room.

Q. Exclusive of all other employees in other departments?

A. Yes, sir.

Q. Do you know when the first contract was

(Testimony of Seth R. Brown.)

entered into between the Santa Ana International Union and the Register Publishing Company?

A. The last one?

Q. The first one?

A. Well, I would judge—the union was chartered in November, 1909, and shortly afterwards the first contract was entered into. I could not give the exact time.

Q. Was the Register newspaper owned by the Register Publishing Company, Ltd. then, in 1909?

A. I don't know the name, whether they went under the Register [21] Publishing Company or not. It is owned by J. P. Baumgartner, under what name I am not familiar with.

Q. And was there a continuous contractual relationship between the Santa Ana Union and the owner of the Register from 1909, during the ownership of Mr. Baumgartner? A. Yes, sir.

Q. And when did the ownership change, or did it change?

A. I think it changed first along in '28 or '29, '28 or '29, when J. Frank Burke purchased the paper from Mr. Baumgartner.

Q. Did the same employees continue to work, do you know?

A. Well, our employees changed from year to year, Mr. Ryan. That is, some come and some go; but the composing room was maintained under the same conditions, so far as the management and the union was concerned.

(Testimony of Seth R. Brown.)

Q. Santa Ana Union continued to have relations with Mr. Burke and Mr. Baumgartner?

A. Yes, sir.

Q. Covering the composing room?

A. Yes, sir.

Q. Do you know when the present management and owner became the publishers of this Register newspaper?

A. I couldn't give you the exact date, but I think it was about 1935, or 1934.

Mr. Ryan: Will you stipulate, counsel, it was 1935?

Mr. Sargent: 1935. [22]

Trial Examiner Moslow: So stipulated?

Mr. Sargent: Yes.

Trial Examiner Moslow: Very well.

Mr. Ryan: Read the question.

(The question was read.)

Q. (By Mr. Ryan): Did the Santa Ana Union continue to have contractual relationship covering the composing room of that newspaper after the present owner of the Register Publishing Company, Ltd. took over, in 1935? A. Yes, sir.

Q. How long did those contractual relations continue between the Santa Ana union and the Register Publishing Company?

Mr. Sargent: I object to that question as calling for a conclusion, and assuming a fact not in evidence.

Trial Examiner Moslow: I will sustain the objection.

(Testimony of Seth R. Brown.)

Q. (By Mr. Ryan): At any time since the inception of the ownership of the Register Publishing Company, over the Register newspaper, did the Santa Ana International Typographical Union enter into a contract with the publishing company?

A. They entered into a contract in 1937.

Trial Examiner Moslow: Was that oral or written?

The Witness: It was an oral contract.

Q. (By Mr. Ryan): Are the terms set out in writing, however? A. Yes, sir.

Q. Do you have a copy of that contract? [23]

A. I think there is one available there.

Q. The terms of the contract were set out in a written document. Is that right?

A. Yes, sir.

Q. Was the written document signed by either party?

A. No, it wasn't. They were not signed.

Mr. Ryan: Mr. Examiner, I find I do not have a copy of that contract, but request the respondent to produce the copy of the contract.

Mr. Sargent: We haven't been called on to produce, and we haven't got one here, Mr. Ryan.

Mr. Ryan: Well, can you produce it by this afternoon?

Mr. Sargent: I don't think we have one. We will look and see; glad to cooperate, if we can.

Mr. Ryan: You will stipulate, however, that there was a contract? Is that right?

(Testimony of Seth R. Brown.)

Mr. Sargent: Yes, we will stipulate there was an oral contract in or about 1937, the terms of which were verbal, but had been reduced to writing.

Trial Examiner Moslow: Is that stipulated, Mr. Ryan?

Mr. Ryan: Yes.

Trial Examiner Moslow: Very well.

Mr. Ryan: Will you also stipulate that the contractual relationship between the company and the union continued until March 1, 1940? [24]

Mr. Ryan: I won't stipulate in that form, no. I will stipulate at all times there have been contractual relationships between the parties hereto.

Trial Examiner Moslow: We will discuss this for a minute further off the record.

(There was a discussion off the record.)

Trial Examiner Moslow: On the record. As a result of an off the record discussion it is agreed between parties that the oral agreement described as having been executed in 1937 continued with minor modifications until March 1, 1940; that the parties are in dispute as to whether or not it continued after March 1, 1940.

Mr. Ryan: So stipulated.

Mr. Sargent: Your Honor, I have no hesitancy in agreeing to your stipulation, except that my client objects to the inference that there was a change in March of 1940.

Trial Examiner Moslow: I understand. You contend there was no change and the Board con-

(Testimony of Seth R. Brown.)

tends there was a change, but you are both in agreement that up until March 1, 1940 there was an oral contract. Is that correct?

Mr. Sargent: That is right.

Trial Examiner Moslow: The stipulation is so received and so understood.

Q. (By Mr. Ryan): Now, in this meeting between the union and the Register Publishing Company that took place March 20, [25] 1940, you say you were present? A. Yes, sir.

Q. Who else was present representing the union?

A. Well, the then president of the local union, Mr. E. Y. Taylor.

Q. President of the Santa Ana International Typographical Union, No. 579?

A. Yes, sir.

Q. Anyone else present on behalf of the union, Mr. Brown? A. No, sir.

Q. Who was present representing the company?

A. Mr. C. H. Hoiles and Mr. Hanna, I think it is E. J. Hanna.

Q. Do you know what position Mr. C. H. Hoiles occupies at the Register Publishing Company?

A. Not exactly.

Mr. Sargent: Did occupy at the time, Mr. Ryan?

Mr. Ryan: At that time, yes.

Trial Examiner Moslow: Will you state for the record, Mr. Sargent, what position he did occupy at the time?

Mr. Sargent: Secretary-treasurer, then and now.

(Testimony of Seth R. Brown.)

Trial Examiner Moslow: Is that agreed, Mr. Ryan?

Mr. Ryan: Yes.

Mr. Sargent: And in charge of all business for the company.

Trial Examiner Moslow: How about Mr. Hanna? [26]

Mr. Sargent: Hanna at that time was business manager under Mr. Hoiles.

Trial Examiner Moslow: Is that agreed, Mr. Ryan?

Mr. Ryan: That is agreed.

Trial Examiner Moslow: Very well. Let us continue.

Q. (By Mr. Ryan): Will you tell us what took place at that meeting? What was said by the various parties? What the nature of the meeting was?

A. The union had requested a 15 cent increase per hour and a week's vacation with pay.

Trial Examiner Moslow: How much of an increase?

The Witness: 15 cents an hour, and there is a few minor changes in the other agreement, the rest of the agreement, but the wages, and the vacations, were the main points put forth.

Mr. Ryan: Will counsel for the respondent stipulate that these contracts which had been in effect from the inception of the ownership of the Register Publishing Company, Ltd., have covered the composing room employees, and that that was the unit of employees covered?

(Testimony of Seth R. Brown.)

Mr. Sargent: Yes.

Trial Examiner Moslow: Very well; so stipulated.

Mr. Sargent: You are referring now to the particular oral agreements, not to exclude any others?

Mr. Ryan: That is right. [27]

Mr. Sargent: Yes. I stipulate to that.

Q. (By Mr. Ryan): Will you tell us what was said at the meeting on March 20th, by yourself and by the other parties involved, indicating each one as you quote him?

A. I called attention to the general increase in wages around in many of the local unions and that our contention was that the scale in Santa Ana was abnormally low compared with the average scale in organized cities.

Q. What was the scale being paid at this time out in Santa Ana newspapers in the composing rooms?

A. They were paid \$1.00 an hour, 37½ hours a week.

Q. Well, were the union's proposals for increases in wages and this proposal with respect to vacations, acceptable to the representatives of the company?

A. No, sir.

Q. Just tell us what happened with respect to those proposals. Did you discuss them with representatives of the company, Mr. Hoiles and Mr. Hanna?

A. Yes. We discussed the subjects at both our March meetings.

(Testimony of Seth R. Brown.)

Q. What was said at the first meeting with respect to wage increases by the management? Did Mr. Hoiles say anything?

A. Well, he took a position that that—that they wouldn't pay any more money. But I don't just recall if it was on that occasion that we spoke about the effect on the other [28] employees in the institution. I think that was at a later date. But we discussed the general wage situation and the counter-proposal that the office had submitted to the union. That was brought up.

Q. These proposals for wage increases in the meeting,—with respect to vacations, had they been submitted by the union to the management prior to this March 20th meeting?

A. Yes, sir.

Q. When had they first been submitted to the company, if you know, by the union?

A. About the first of March, the latter part of February, in 1940.

Q. And prior to March 20th, when you entered the negotiations, had a previous meeting been held with representatives of the company by the union?

A. One meeting had been held.

Q. You did not attend that meeting, however?

A. No, sir.

Q. Prior to your entering the negotiations on March 20th, had the company submitted counter-proposals to the union with respect to wages?

A. They submitted a counter-proposal, seven points.

(Testimony of Seth R. Brown.)

Q. Can you tell us what those seven points were?

A. Offhand I couldn't tell them in the language as expressed, but they did refer to the payment of 75 cents an hour for what [29] was termed straight matter operators, no discrimination between union and non-union workmen——

Trial Examiner Moslow: Slower.

The Witness: Beg pardon?

Trial Examiner Moslow: Slower.

The Witness: And——

Mr. Sargent: 75 cents per hour for straight what?

The Witness: Straight matter operators.

Mr. Sargent: Thank you.

The Witness: The privilege of working their employees four hours a day instead of a full complement of hours, complete jurisdiction over the apprentices both as to the number to be employed and as to the work they should perform from year to year; and I think the week was staggered into seven—five seven-hour days, and one five-hour day.

Q. (By Mr. Ryan): With respect to straight matter operators, what do you mean by that term?

A. That was a term used by the publishers in their counter-proposition. What they intend to infer I imagine is the operators who operate on straight news matter instead of what we call ad composition and liners and baseball scores and so forth, that take more qualified men to perform than it does the straight matter operators.

Q. This proposal with respect to 75 cents an

(Testimony of Seth R. Brown.)

hour for straight matter, was it a decrease from the scale in effect [30] at that time in the shop?

A. A decrease of 25 cents an hour.

Q. Was the union asking for 15 cents increase an hour for that type of operation?

A. Yes, sir.

Q. Which would mean \$1.15 an hour?

A. Yes, sir.

Q. You stated that the company in its counter-proposals demanded a complete control of apprentices. Is that right?

A. Yes, sir.

Q. Well, explain what is meant by the term "apprentices" as it was used in these negotiations between the union and the company.

A. Well, boys who were learning the printing industry, and must serve an apprenticeship of six years; the first year they are under the control of the office, and at the end of the first year they have—if they have proven competent, they are registered apprentices of the International Typographical Union, and are compelled to take the I. T. U. course in printing.

Q. By "I. T. U. course" what do you mean?

A. It's a course in trade publications to enlighten the apprentices on the various elements of the printing craft and the composing room.

Q. I. T. U. are the initials for the International Typographical [31] Union? Is that what you have reference to?

A. Yes, sir.

Trial Examiner Moslow: What do you mean,

(Testimony of Seth R. Brown.)

that the apprentices must serve an apprenticeship of six years?

The Witness: Before they are eligible to become members of the International Typographical Union.

Trial Examiner Moslow: That is a rule of the union?

The Witness: Yes, sir.

Q. (By Mr. Ryan) After they have served an apprenticeship of six years what term is applied to them then?

A. If they are acceptable and are qualified, they are made journeymen members of the union. In other words, they are transferred from the apprenticeship list to the journeymen list of the union.

Q. In the union's contracts with employers throughout the printing industry, are there provisions in the contract with respect to training of apprentices?

A. Well, each—many contracts vary in that. They have various stipulations. As a rule the contract provides the work that the boys shall perform from year to year, the idea being to give him a good idea of all of the various departments in the composing room, with the stipulation that he must be given an apprenticeship upon the typesetting machines during the last year of his apprenticeship.

Q. Can you give us an outline of the various operations [32] that are performed in the composing room of the Santa Ana newspaper?

A. You would have your machine operators, your

(Testimony of Seth R. Brown.)

make-up employees, your ad men, bank men, mark-up men, and apprentices.

Q. Now, in the training——

Mr. Sargent: Just a minute. The first one was what?

The Witness: Operators, machine operators.

Mr. Sargent: Thank you.

Q. (By Mr. Ryan) In the training of these apprentices over a period of six years, are they trained in the various duties that you have outlined?

A. Yes, sir.

Q. Has there been any different custom established by the International Typographical Union and the newspaper companies which operate under contract with that union, with respect to apprenticeship regulations throughout the industry?

Mr. Sargent: Don't answer that, please. Excuse me, Mr. Ryan. Had you finished?

Mr. Ryan: Yes.

Mr. Sargent: I object to that on the ground that there is no foundation laid showing any general custom was made in any association.

Trial Examiner Moslow: I will overrule the objection.

Mr. Sargent: Read the question.

(The question was read.) [33]

Mr. Sargent: Mr. Examiner, further in objection to this question, it opens up a field which leads to speculation as to what might be the general rule, and what might be the exception could not be ob-

(Testimony of Seth R. Brown.)

tained without going into a series of other contracts which are not before us and can't be before us without greatly prolonging the case.

I have no objection to what was said in respect to this case, in any conference that took place between the union and the management, and any custom apart from that should not be permitted to come into the case.

Trial Examiner Moslow: We will discuss this further off the record.

(There was a discussion off the record.)

Trial Examiner Moslow: On the record.

We have had an off-the-record discussion as to the contention of the Board on a particular point. I want to state for the record that any time discussions are held off the record, if any of the parties wishes it reproduced or summarized on the record, that may be done. The sole purpose of going off the record is to conserve and shorten the record.

Mr. Sargent: I would state, in that connection that I simply want this one remark upon the record: That we draw attention to the difference between the training of the apprentices under the I. T. U., as the parent organization, and the control of the number of apprentices, and the particular [34] duties for the employees, in respondent's and other shops.

Trial Examiner Moslow: Read the question.

(The question was read.)

(Testimony of Seth R. Brown.)

Trial Examiner Moslow: The objection is overruled as to that question.

The Witness: You mean the formation of a mutual committee to take care of the apprenticeship question in the particular community or office?

Q. (By Mr. Ryan) Mutual agreement as to what method of training should be accorded to the apprentices from year to year, so that they will eventually develop into full-fledged and well trained journeymen.

A. That is a matter of negotiations between the local publisher and the local union, but you understand the restrictions are that the boy cannot perform any work on a typesetting machine except during the last year of his apprenticeship. The other years his work is divided up and agreed upon, where he shall work in certain years, between the office and the union at the time the contract is signed, or previous to it.

Q. Are there certain rules in the by-laws of the International Union with respect to training of the apprentices?

A. No, there is no set provision, Mr. Ryan.

Q. Is there anything in the by-laws of the International Union which will restrict the International Union from [35] entering into a contract with a company, which gives the company exclusive and absolute right to control the apprentices working in the shop, in all respects——

Mr. Sargent: Just a minute, before you answer. Have you finished?

(Testimony of Seth R. Brown.)

Mr. Ryan: In all respects to their employment and training.

Mr. Sargent: I object to the question as assuming facts not now in evidence and therefore not applicable to this case. There has been no testimony indicating that this management had insisted upon any such wide control as is assumed by the question.

Trial Examiner Moslow: The objection is overruled. Do you understand the question?

The Witness: I understand to this extent: That in the counter-proposition submitted by the——

Trial Examiner Moslow: That is not the question. The question is as to the by-laws. Read the question.

(The question was read.)

Mr. Sargent: Further, Mr. Examiner, I understand now from the question that this is a contract with the International which is not involved at all in this case.

Trial Examiner Moslow: My ruling is the same.

The Witness: Well, the control of apprentices is under control of the International Typographical Union, and through [36] the local union.

Trial Examiner Moslow: The question, Mr. Brown, is: Is there anything in your by-laws on the subject?

The Witness: You mean any specific reference to it?

Trial Examiner Moslow: That is right.

(Testimony of Seth R. Brown.)

The Witness: I couldn't say, Mr. Examiner.

Mr. Ryan: I will withdraw the question for the time being.

Q. (By Mr. Ryan) Are the local units affiliated with the International Typographical Union, free to enter into any type of contract that they may desire, irrespective of the by-laws of the International Union? A. No, sir.

Mr. Sargent: I take it that answer—the question is asking for this witness' opinion only? Is that correct, Mr. Ryan?

Mr. Ryan: I think I have qualified him as an expert witness, in so far as the union is concerned, inasmuch as he has been connected with it for a great many years in an official capacity.

Q. (By Mr. Ryan) Getting back to this March 20, 1940, meeting, what discussion did you have with respect to the company's proposal on apprentices? What further discussion did you have?

A. We had a discussion—— [37]

Q. Tell us what Mr. Hoiles said. If he said anything on that point tell us what he said about it, as best you can.

A. His position was that the boys should be permitted to work on a machine before the six years of apprenticeship.

Q. Did he say that? A. He——

Trial Examiner Moslow: What kind of a machine?

The Witness: Typesetting machine.

Q. (By Mr. Ryan) Did he say that?

(Testimony of Seth R. Brown.)

A. Yes, sir.

Q. Was that agreeable to the union?

A. No, sir.

Q. Can you state—did you say anything in reply to Mr. Hoiles on that point?

A. I quoted the law in reference to the International law that an apprentice could not work on a typesetting machine, except in the last year of his apprenticeship.

Q. Can you find that law in the constitution and by-laws of the International Union?

A. I think I could find it, yes.

Q. I show you the copy of the by-laws and constitution, which is in evidence as Board's Exhibit 3—

Trial Examiner Moslow: It is not in evidence yet.

Mr. Ryan: I am sorry— [38]

Mr. Sargent: I will have to object unless it is shown that particular provision, if there be one, was in effect in 1940. Here you have one which shows January 1, 1942, and it was 21 months subsequent to the time we are discussing. Have I made my objection clear?

Trial Examiner Moslow: That is right. Mr. Ryan, suppose you have reference to that during the lunch recess, and let's proceed.

Q. (By Mr. Ryan) Mr. Brown, what further discussion did you have with respect to apprenticeship? Did you have any further discussion on that point at the March 20th meeting?

(Testimony of Seth R. Brown.)

A. Well, in general the discussion was around the fact that the office desired to have a boy perform any work which they thought he should do in the composing room, instead of being restricted as to work performed from year to year.

Mr. Sargent: I don't object to that because I presume that is what Mr. Hoiles stated.

Trial Examiner Moslow: Is that what you contend Mr. Hoiles stated?

The Witness: Yes, sir.

Q. (By Mr. Ryan) And by "boy" you have reference to an apprentice?

A. Apprentice, yes, sir.

Q. With respect to the matter of the company's offer as to [39] 75 cents an hour for straight matter operators, what did the union representatives state in that respect? You, particularly?

A. They were opposed to the suggestion for the specific reason that all scales made by the union are the minimum scales. They are supposed to cover any employee of the composing room, any competent employee, and that does not prevent the employer from paying over the scale, if he so desires. But in no cases did they differentiate between operators.

Q. At that time had the union set up a minimum scale with respect to operators?

A. They were working under a dollar an hour for a minimum scale for each one in the composing room.

(Testimony of Seth R. Brown.)

Trial Examiner Moslow: What do you mean by no differentiation in the operators?

The Witness: A minimum between what they term straight matter operators and the skilled operator on ad display, etc.

Mr. Ryan: If the Examiner please, it is 12:00 o'clock and it is convenient for me to recess for noon, inasmuch as I desire to get the constitution and by-laws.

Trial Examiner Moslow: Very well. We will recess until 1:30.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 1:30 o'clock p.m., of the same day.) [40]

AFTERNOON SESSION

(The hearing was reconvened at 1:30 o'clock p.m.)

SETH R. BROWN,

resumed the stand as a witness for the National Labor Relations Board, having been previously duly sworn, and testified further as follows:

Direct Examination

(Continued)

Trial Examiner Moslow: The hearing will come to order.

Mr. Ryan: May I please have the last question?
(The record was read.)

Q. (By Mr. Ryan) Mr. Brown, I previously

(Testimony of Seth R. Brown.)

asked you whether there was anything in the by-laws of the Typographical Union which would prevent it from accepting the proposal made by the Register Publishing Company with respect to apprentices.

A. There were several sections——

Mr. Sargent: Just a minute, please. Are you finished?

Mr. Ryan: Yes.

Mr. Sargent: I object to the witness answering unless during the conversations he so told the management.

Trial Examiner Moslow: The objection is overruled.

Mr. Sargent: Mr. Examiner, do I understand that whatever was a part of their internal organization, that was binding on the management, without their being shown it?

Trial Examiner Moslow: Whether or not it was binding, I will receive the evidence. [41]

Mr. Ryan: Mark this, please, as Board's Exhibit 4 for identification.

(Thereupon the document referred to was marked as Board's Exhibit No. 4, for identification.)

Q. (By Mr. Ryan) Mr. Brown, I show you what is marked Board's Exhibit 4 for identification, which purports to be a book of laws of the International Typographical Union in effect January, 1940, and ask you whether or not that is a copy of the

(Testimony of Seth R. Brown.)

laws of the International Typographical Union in effect as of the date showing on the outside of the cover? A. Yes, sir.

Mr. Sargent: What was the answer to that?

The Witness: Yes, sir.

Mr. Ryan: I offer Board's Exhibit 4 in evidence.

Mr. Sargent: Mr. Examiner, there has been no foundation here during any of the testimony thus far that, during these negotiations, these laws were made known to the management, that the management—that they should be a part of any verbal agreement or any future agreement, or that they played any part in the negotiations. Until such time as we have foundations for it, the mere introduction of this book is prejudicial to the respondent, without having given him an opportunity at any time during the negotiations to know what was in them, whether they precluded or did not preclude [42] objections to any rules.

Trial Examiner Moslow: The objection is overruled. Mr. Brown, were the by-laws in effect at the time of the negotiations in 1940?

The Witness: Yes, sir.

Mr. Sargent: I respectfully object to your Honor's question unless they were known to the respondent.

Trial Examiner Moslow: I am not asking at the moment the question of whether or not the respondent was bound by these by-laws, or what the effect of these by-laws were upon the negotiations, but I am receiving them for the purpose stated,

(Testimony of Seth R. Brown.)

namely: To know what was the by-laws, and whether the local union considered itself bound, regardless of whether that position was made known to the respondent.

Mr. Sargent: But, your Honor, I submit to you that it has no bearing upon the case, unless the union made it known to the respondent that it was bound, or its authority was limited, or in some way brought home to the management that here was something upon which the union didn't have a free hand. [343]

Trial Examiner Moslow: You must distinguish, Mr. Sargent, between my receiving of evidence in the threshold of this hearing, and my making a ruling that evidence is binding against you. I can't determine at this stage whether the by-laws would be binding, but I am disposed to receive them.

Perhaps before the end of the hearing a motion may be made to strike, at which time I will be in a position to rule.

Mr. Sargent: Just one more remark, Mr. Examiner, and I am saying this merely as an expression of our viewpoint, which carries out through your entire line of questioning. Until such time as it is shown to be competent, by reason of having been brought home, it is our position that the evidence itself is incompetent and immaterial, because it could have no bearing, except by being in the record, to have a prejudicial effect, until it has been connected up; and, therefore, I would like to have an objection to all the line of questions with regard

(Testimony of Seth R. Brown.)

to this, until such time as there has been a tie-up between the negotiations themselves and the book of the international laws.

Trial Examiner Moslow: You may have such an objection and exception to the entire line.

Did you offer Board's Exhibit 4?

Mr. Ryan: Yes, I did.

Trial Examiner Moslow: Board's Exhibit 4 will be [44] received.

(Thereupon the document heretofore marked for identification as Board's Exhibit No. 4, was received in evidence.)

BOARD'S EXHIBIT No. 4

GENERAL LAWS

Article I.—Apprentices.

Section 1. Apprentices shall not be less than 16 years of age at the time of beginning their apprenticeship. They shall be listed by the secretary of the local typographical union and they shall serve an apprenticeship period of six years before being admitted to journeymen membership in the union: Provided, That upon request of the local union and employer, and with the consent of the President of the International Typographical Union, a period of time not to exceed one year may be deducted from the six-year apprenticeship term: Provided, further, Failure of apprentice member on completion of his apprenticeship period to file his application for transfer to the journeyman roll shall be sufficient

(Testimony of Seth R. Brown.)

cause for cancellation of his apprenticeship.

Sec. 2. Mailer and machinist apprentices shall be exempt from the requirement that the Course of Lessons in Printing must be completed before transfer to journeymen membership. Provided, however, that at beginning of fifth year all such apprentices must subscribe for, and complete Unit Six of the Course of Lessons before admission as journeymen.

Sec. 3. All apprentices entering the trade shall be required during the first year to pass a physical and technical examination given by the apprentice committee of the subordinate union to which such application is made.

Sec. 4. No apprentice shall leave one office and enter that of another employer without the written consent of the president of the local union, and the date of such change of offices by the apprentice shall be recorded on the books of the union.

Sec. 5. All local unions are required to enact laws defining the grade and classes of work apprentices shall be taught from year to year, so that they will have the opportunity of acquiring a thorough knowledge of the trade. No office shall be entitled to employ an apprentice unless it has the equipment necessary to enable instruction being given the apprentice in the several classes of work agreed upon in the contract with the employer to be taught each year.

Sec. 6. All applicants for apprentice membership in the International Typographical Union shall

(Testimony of Seth R. Brown.)

be required to pass a technical examination given by the apprentice committee of the subordinate union to which such application is made.

Sec. 7. At the beginning of the second year, if apprentices prove competent, they must be admitted as apprentice members of the union.

Sec. 8. Every person admitted as an apprentice member of a local union at the beginning of the second year of apprenticeship shall subscribe to the following obligation:

I (give name) hereby solemnly and sincerely swear (or affirm) that I will not reveal any business or proceedings of any meeting of this or any subordinate union to which I may hereafter be attached, unless by order of the union, except to those whom I know to be members in good standing thereof; that I will, without equivocation or evasion, and to the best of my ability, abide by the constitution, by-laws and the adopted scale of prices of any union to which I may belong, as they apply to apprentice members; that I will at all times support the laws, regulations and decisions of the International Typographical Union, and will carefully avoid giving aid or succor to its enemies, and use all honorable means within my power to procure employment for members of the International Typographical Union in preference to others; that I will not wrong a member of this union or see him or her wronged, if in **my power to prevent.** To all of which I pledge my most sacred honor.

Sec. 9. Apprentice members shall not have the

(Testimony of Seth R. Brown.)

privilege of voting. From the time of registration until such apprentice members are transferred to the journeyman roll, they shall pay per capita tax and subscription to The Typographical Journal as provided in section 1, article ix, constitution. They shall be exempt from pension and mortuary assessments.

Sec. 10. Following initiation the apprentice member shall be registered with the Secretary-Treasurer of the International Typographical Union, who will assign to each junior member a registry number.

Sec. 11. Beginning with the second year, apprentices shall be enrolled in and complete the International Typographical Union Course of Lessons in Printing before being admitted as journeymen members of the union. This course of lessons shall include a course on trade unionism, containing complete information and instruction on the principles of unionism, and to be prepared by the Educational Bureau of the International Typographical Union.

Sec. 12. Starting with the second year apprentices are entitled to and must be in possession of an apprentice working card.

Sec. 13. Arrangements should be made to have apprentices during the sixth year instructed on any and all typesetting and typecasting devices in use in the offices where they are employed.

Sec. 14. Apprentices shall be required to complete the I. T. U. Course of Lessons in Printing before being admitted to journeyman membership, except with the consent of the President of the In-

(Testimony of Seth R. Brown.)

ternational Typographical Union. The President of the International Typographical Union shall have authority to cancel the card of any person admitted to membership in violation of any of the foregoing provisions and may impose a penalty not to exceed \$25 on offending unions.

Sec. 15. Local unions shall provide for the appointment of a committee on apprentices. The duties of the committee on apprentices shall be to inquire into the educational qualifications of applicants for apprenticeship, examine each apprentice, to ascertain if he is meeting the necessary requirements called for in the several classes of work specified for each year of his apprenticeship, and if, after such examination, the committee finds the apprentice has not made satisfactory progress, it shall so report to the union for such action as it is deemed proper to take; to require the attendance of apprentices at continuation and other schools and report any delinquency to the union; to compel all apprentices in the last five years of their apprenticeship to complete the I. T. U. Course of Lessons in Printing.

Sec. 16. A local joint apprentice committee composed of equal representation of the employers and the union should be formed to make surveys and study, investigate and report upon apprentice conditions. They shall act to enforce the conditions of the agreement covering apprentices and shall have full power and authority any time during the term of apprenticeship to terminate the apprenticeship of an apprentice who does not show aptitude and

(Testimony of Seth R. Brown.)

proper qualifications for the work, or for any other reasons. This committee shall meet jointly at the call of the chairman of each committee at such time and place as may be determined by them.

Sec. 17. Local unions shall incorporate in their contracts with employers a section containing the necessary requirements to carry out the apprenticeship laws of the International Typographical Union.

Sec. 18. The foreman and chairman of the chapel shall see that apprentices are afforded every opportunity to learn the different trade processes by requiring them to work in all departments of the composing room. When apprentices show proficiency in one branch they must be advanced to other classes of work.

Sec. 19. Local unions shall arrange scales of wages for apprentices in the second, third, fourth, fifth and sixth years of their apprenticeship, such scales to be indicated as proportionate to journeymen's scale. Registered apprentices shall be given the same protection as journeymen and shall be governed by the same shop rules, working conditions and hours of labor.

Sec. 20. Local unions are required to fix the ratio of apprentices to the number of journeymen regularly employed in any and all offices, but it must be provided that at least two members of the typographical union, aside from the proprietor, shall be regularly employed in the composing room before an office is entitled to an apprentice.

Sec. 21. For each additional five journeymen

(Testimony of Seth R. Brown.)

regularly employed an additional apprentice may be permitted. Provided, When four apprentices are employed, an additional apprentice for each ten journeymen may be employed. Provided, further, Nothing in this section shall be construed as prohibiting any subordinate union from inserting in the contract a provision that the total number of apprentices of any office shall be less than four.

Sec. 22. No apprentice shall be employed on overtime work in an office unless the number of journeymen employed on the same shift equals the ratio prescribed in the local scale. At no time shall any apprentice have charge of a department or class of work.

Sec. 23. Subordinate unions may adopt regulations preventing apprentices from continuing in or seeking employment in the office where they completed their apprenticeship for a period not to exceed one year.

Article II.—Arbitration.

Sec. 2. It is imperatively ordered that the executive officers of the International Typographical Union shall not submit any of its laws to arbitration.

Q. (By Mr. Ryan): Mr. Brown, I show you Board's Exhibit No. 4 in evidence, and ask you to

(Testimony of Seth R. Brown.)

read those sections relative to apprentices, and requirements of the union with respect to entering into contracts relative to that particular——

Trial Examiner Moslow: Are you asking him to read it aloud or to himself?

Mr. Ryan: To read it out loud.

Trial Examiner Moslow: I don't see the necessity of reading aloud. I will allow you to have the witness state what particular sections you have in mind.

Mr. Sargent: I am going to object to that question, unless he told the management at the time he had that in mind.

Trial Examiner Moslow: Mr. Sargent, you have a general objection to this entire line.

Q. (By Mr. Ryan): Will you point out the sections and pages in the bylaws of Board's Exhibit 4 with reference to apprentices?

A. These sections are under General Laws, Article I, of Apprentices, Section 13, Section 17, 18, 20, 21, and 22.

Q. Are those the sections which the union relies on as evidence that it could not accept the proposal of the company—— [45]

A. Yes, sir.

Q. ——with respect to apprentices?

Mr. Sargent: I object to that as putting in the witness' mouth an answer which has not yet been given by him, that he ever objected on the ground that he couldn't do this under international laws.

Trial Examiner Moslow: I will overrule the objection. The answer may stand.

(Testimony of Seth R. Brown.)

Q. (By Mr. Ryan): In your discussion with Mr. Hoiles on March 20, 1940, did you make any statement to him as to what the union's position was with respect to his offer on apprentices?

A. I don't believe that came up at that particular time, Mr. Ryan. I think it was later. We discussed the wage question and the vacations with pay more extensively than any other subject.

Q. Did you come to any agreement on those two?

A. No, sir.

Q. Did you thereafter have another meeting with representatives of the company to continue negotiations?

A. After March 27?

Q. The March 20 meeting is the one we are now talking about.

A. March 27, I believe, was the next meeting.

Q. Where did that meeting take place and who was present, Mr. Brown? [46]

A. In the office of the Santa Ana Register, the business office; present on behalf of the union: myself, and present, E. Y. Taylor of the Santa Ana Typographical Union, representing the union; and Mr. C. H. Hoiles and Earl J. Hanna, representing the Register.

Q. What were the subjects of discussion at that meeting?

A. They were practically the same discussions as prevailed at the March 20 meeting.

Q. You mean with respect to the company's proposal on apprentices?

(Testimony of Seth R. Brown.)

A. Yes, sir. That was brought up at the second meeting.

Q. What discussion was had at that meeting with respect to the company's proposal on apprentices?

A. Some reference was made to the counter-proposition submitted by the publishers, and in that was included a section that the office must be, must have complete control, over the apprentices, both as to the number to be employed, and as to the work they should perform from year to year, and we entered into a general discussion of that subject to some extent.

Q. What was said on behalf of the union's position by you with respect to that problem, if anything? What did you say in regard to that proposal?

A. Well, I stated that the union had certain regulations in reference to the number of apprentices to be employed and as to the work they should perform; and that an apprentice was [47] not permitted to work on a typesetting machine until the last year of his apprenticeship, and that seemed to be a matter of controversy.

Q. And when you say the union had certain regulations, what do you mean by that?

A. Well, they had a provision, an international law, it was also incorporated in the oral contract that was in existence at the time of this controversy.

Q. You have reference to the contract which had been in existence between the union and the Regis-

(Testimony of Seth R. Brown.)

ter Publishing Company, Ltd. prior to March 1, 1940. Is that right?

A. Yes, the one that expired, but they were still working under it.

Q. Was any agreement reached on any of the issues between the company and the union at this time, this March 27 meeting? A. No, sir.

Q. Were any changes made in the proposals by either the union or the company?

A. Not up to that time.

Q. Up to that time the union's proposal with reference to wages was a request for 15 cents an hour increase over the prevailing scale in the shop, of a dollar an hour. Is that right?

A. Yes, sir.

Q. Also, there was a provision with respect to vacations? [48]

A. One week's vacation with pay.

Q. Did you have any further meetings with the company after March 27, 1940?

A. The next meeting was on April 15, 1940.

Q. Where was that meeting, and who attended on behalf of each party?

A. It was held at the office of the Santa Ana Register. Present for the union was myself and George Duke; on behalf of the Register was Mr. C. H. Hoiles and Mr. Hanna.

Trial Examiner Moslow: Who is George Duke?

The Witness: He is sitting right there (indicating).

Mr. Duke: I am George Duke.

(Testimony of Seth R. Brown.)

Trial Examiner Moslow: Who is George Duke?
What office did he hold, Mr. Brown?

The Witness: He was, I think, vice president at that time, of the union.

Trial Examiner Moslow: Of the local?

The Witness: The local union, yes, sir.

Q. (By Mr. Ryan): All right. Have you told us who was present on behalf of the company?

A. Yes, sir; Mr. Hoiles and Mr. Hanna.

Q. What was the subject of discussion at that meeting?

A. We asked the representative of the publisher if they had any counter-proposition to make, and they said no. Then we, on behalf of the union, offered to submit a proposition to the [49] local union for consideration, to settle the scale on the basis of \$1.06 an hour, and that offer was immediately turned down by the representatives of the Register.

Q. What did Mr. Hoiles say?

A. In effect there was no justification for an increase.

Q. Did he tell you what he would offer to pay, or did he make any offer on wages at all?

A. He made no offer whatsoever.

Q. Was anything other than wages discussed at that meeting?

A. I made an offer that we arbitrate the case.

Mr. Sargent: Who made the suggestion?

The Witness: I made the suggestion.

Q. (By Mr. Ryan): Did you make that sugges-

(Testimony of Seth R. Brown.)

tion to Mr. Hoiles and the other company representative, Mr. Hanna? A. Yes, sir.

Q. What did you propose to arbitrate?

A. The various sections that were at issue on the scale.

Q. The wage scale?

A. The wage was a part of it?

Q. Did the company raise any point, renewing its position with respect to apprentices, at this April 15 meeting?

Trial Examiner Moslow: Before you get to that point, what answer was made when you made the suggestion about arbitration?

The Witness: Mr. Hoiles stated that they would take the [50] position that they would refuse to submit the matter to a third party for arbitration.

Q. (By Mr. Ryan): Was any discussion had about apprentices at this April 15, 1940 meeting?

A. I don't recall that there was.

Q. Was any discussion had regarding anything else pertaining to the contract with the company?

A. Well, there was a discussion between another representative of the union and one of the publishers, but——

Q. Who representing the union and who representing the company?

A. Well, Mr. Duke for the union and Mr. Hoiles represented the register?

Q. Were you present? A. Yes, sir.

Q. You heard what was said, did you?

A. I did.

(Testimony of Seth R. Brown.)

Q. Tell us what was said by each party, Mr. Brown?

A. Mr. Duke stated that the Santa Ana Typographical Union would desire to enter into a contractual relation with the Santa Ana Register; in the event they reached an agreement they wanted the contract underwritten and signed by both parties. Mr. Hoiles stated that the Register was opposed to a signed, written contract.

Q. Did you request Mr. Hoiles to submit any counter- [51] proposals in this April 15 meeting with respect to wages or any other—

A. Previous to submitting our proposition for \$1.06 we asked them if they had any proposition to submit, because we had requested at the last meeting, March 27, that the Register submit any proposition that they had, that they felt disposed to do, at the next meeting, and that the union would do likewise.

Q. But they did not submit any counter-proposal?

A. No, sir.

Q. It was at the April 15 meeting?

A. No, sir, they did not.

Q. How did the meeting terminate?

A. We again requested the Publisher to submit a proposition to settle the controversy, and I believe we agreed on another meeting at that time.

Q. Were any terms of a contract agreed upon at the April 15 meeting?

A. No, sir.

Q. Thereafter did you have another meeting with the management of the company?

(Testimony of Seth R. Brown.)

A. Yes, sir.

Q. When was it, and who was present?

A. I believe it was May 3, and the same parties were present: Mr. Duke and Mr. Brown for the union, and Mr. Hanna and [52] Mr. Hoiles for the Register.

Q. What were the suggestions discussed at that meeting of May 3, 1940?

A. The union representatives again asked the publisher if they had any proposition to submit and they said no. Thereupon, Mr. Duke on behalf of the union submitted another proposition to settle the controversy, based upon a graduated scale for a three-year period running from a dollar up to \$1.08 an hour over a period of three years, with a step-up, I believe, of every six months. This proposition was taken under consideration by the representatives of the Register.

Trial Examiner Moslow: Will you read that back, please, Miss Reporter?

(The record was read.)

Q. (By Mr. Ryan): Mr. Brown, I ask you whether or not the proposition submitted by Mr. Duke was as follows: \$1.03 per hour up until September 1, 1940; and from September 1, 1940 to March 1, 1941, \$1.04 per hour. Is that right so far?

A. That is right.

Q. \$1.05 per hour from March 1, 1941 to September 1, 1941; \$1.06 per hour from September 1, 1941 to March 1, 1942; \$1.08 from March 1, 1942 to March, 1943; is that right?

(Testimony of Seth R. Brown.)

A. That is right.

Trial Examiner Moslow: Just a second, please. Read that last there. [53]

(The record was read.)

Mr. Ryan: Will counsel for the respondent stipulate that is the counter-proposal that was offered to the company as of that date?

Mr. Sargent: I am informed, Mr. Ryan, that there were one or two other provisions in the proposal.

Mr. Ryan: Yes, I am going into that; but, with respect to wages.

Mr. Sargent: Let us get the whole thing before us——

Trial Examiner Moslow: What is the necessity of getting a stipulation on these minor points? I assume if the company doesn't dispute it that was the offer that was made.

Q. (By Mr. Ryan): Did the union offer a proposal on any other base?

A. Well, yes. A proposal for a vacation with pay.

Q. Do you recall what that proposal was?

A. Well, it was a step-up from two days a week to start with, up to the last year it would be five days.

Q. I ask you whether or not the proposal was two days vacation with pay in 1940; three days with pay in 1941; five days with pay in 1942; five days with pay in 1943.

A. That is right.

Q. Did Mr. Hoiles agree or disagree with the

(Testimony of Seth R. Brown.)

offer? What did he say with reference to the offer on wages and vacation? [54]

A. He would take it under consideration.

Q. Was that the way the meeting terminated? That he would take these proposals you have just outlined under consideration?

A. Well, we asked him if he would consider the matter, and he said he would, and give us his answer.

Q. Was any arrangement made for a further meeting between the union and the company?

A. Yes, we had another meeting. I don't know whether it was arranged that particular day or not, but we had another meeting some two weeks later.

Q. I ask you if it was on or about May 16, 1940.

A. Yes, sir. I believe about that time.

Q. Who were the parties present at that meeting, and where was the meeting held?

A. Mr. Duke, Mr. Brown on behalf of the union; and Mr. Hoiles and Mr. Hanna on behalf of the publishers, and it was held in the office of the Santa Ana Register.

Mr. Sargent: Just a minute. Did I understand the witness to say he was there too?

The Witness: Yes, sir.

Q. (By Mr. Ryan): Will you tell us what was said by the various representatives at that meeting?

A. Well, I believe we were to have a meeting of the local union that evening, and after we met, and Mr. Hoiles had [55] definitely rejected the offer made by the union representatives, we expressed our

(Testimony of Seth R. Brown.)

regrets, because we called attention to the fact that the union was going to meet that evening, and that we were in hopes that the committee could recommend something that would meet with the approval of the organization.

You understand we didn't have carte blanche to close up a proposed wage scale. All we could do was to recommend to the union, and this was a proposition that we submitted to the publisher, that the union committee was willing to submit for approval to the local union.

Q. You say Mr. Hoiles rejected the proposal of the union on wages and vacation that you have just outlined? A. Yes, sir.

Q. Which was given to them, I believe, at the meeting of May 3, 1940. What did he say in respect to wages and vacation?

A. He stated he didn't see any justification for an increase of that kind, and they wanted to know where the money was coming from. I stated of course that we couldn't—very often we have that very question asked by publishers, when we are negotiating scales, and we are in no position to even recommend what a publisher should do to take care of his own business. If he wants to raise his newspaper rates, he does so without any solicitation on behalf of the union. We haven't anything to do with it and, therefore, the answer is always [56] the same when that question is asked; and in this particular case we informed Mr. Hoiles, of course we couldn't in-

(Testimony of¹ Seth R. Brown.)

struct him how to run his business institution, for which he would be the first one to object.

Q. Did he submit any counter-proposals of his own with respect to these matters pertaining to wages and to vacations, when he rejected your proposal?

A. Not up to that time, or including that meeting.

Q. Did you ask him for proposals?

A. We did on various occasions.

Q. At that meeting did you?

A. Yes, sir.

Q. What was his reply?

A. He didn't have anything to offer.

Q. Did you hold any further meetings with representatives of the company after this meeting of May 16, 1940?

A. No, not for several months.

Q. How did it come about that you did not hold any meetings with the company again for a period of several months?

A. The union decided after considering the whole situation, that they would hold the matter in abeyance, pending developments.

Q. What do you mean by the whole situation?

A. The fact we couldn't arrive at any agreement. We had had several meetings with the publisher, and we couldn't [57] reach an agreement, and desiring to continue cordial relations and contractual relations, we believed it would be better to hold the matter in abeyance pending certain developments.

Q. Did you subsequent to May 16, 1940 eventually

(Testimony of Seth R. Brown.)

hold another meeting with the management of the company?

A. Yes, sir. The local typographical union, Santa Ana Typographical Union, adopted a new job scale in Orange County.

Q. You mean a new commercial job scale?

A. That is right, a new commercial job scale.

Q. When? In 1941?

A. March, 1941; and I think about the same time the local union also adopted a new newspaper scale incorporating the same provisions, so far as wages were concerned, as those that were incorporated in the commercial scale and signed by the union commercial men in Orange County.

Q. Did you, about March, 1941, enter into contracts in Santa Ana with the commercial job printers for a new scale of wages?

A. Santa Ana Typographical Union entered into contracts with proprietors of commercial houses, union proprietors of commercial houses.

Trial Examiner Moslow: In Santa Ana?

The Witness: In Santa Ana, and Orange County.

[58]

Trial Examiner Moslow: Is Santa Ana in Orange County?

The Witness: Yes, sir. I think we had offices in Laguna Beach, too, that came under the division.

Q. (By Mr. Ryan): What was the new wage scale?

A. It was \$1.07 from March, I think, or April, up to October.

(Testimony of Seth R. Brown.)

Q. I ask you if it was \$1.07 per hour from April 1, 1941 to October 1, 1941; and \$1.12 per hour from October 1, 1941 to October 1, 1942.

A. Yes, those were the provisions of the scale.

Q. With how many commercial job shops in Santa Ana did you arrive at contracts for that scale?

A. I don't know the total number of it, but all union shops. The members of the local union could give you more information on that, but all the union shops signed the contract.

Q. Previous to signing the contract in March, 1941, with the commercial job shops, what had the wage scale been in those shops per hour?

A. \$1.00 an hour.

Mr. Sargent: I object to that as not being applicable to the newspaper scale in any wise whatsoever.

Trial Examiner Moslow: Objection overruled.

Q. (By Mr. Ryan): At the time that this commercial job scale was adopted, I believe you testified that an identical newspaper scale was adopted, also, by the union.

A. As to wages, at least. [59]

Q. As to wages? A. Yes.

Q. Did you about that time in March, some time around in March, contact the representatives of the Register Publishing Company with the intention of resuming negotiations covering wages and working conditions, Mr. Brown?

Trial Examiner Moslow: Off the record.

(There was a discussion off the record.)

(Testimony of Seth R. Brown.)

Trial Examiner Moslow: On the record. Read the question.

(The question was read.)

The Witness: Yes, sir.

Trial Examiner Moslow: What year is that? 1941?

The Witness: 1941.

Q. (By Mr. Ryan): How was the company contacted by the union with respect to requesting the company to enter into negotiations with the union, in 1941, March?

A. A letter was sent by the Santa Ana Typographical Union to the Register, requesting a meeting to negotiate a contract.

Q. Did you receive a reply to your letter?

A. I don't know whether there was a written reply or not, but a meeting was held——

Q. Was a meeting between the company and the union arranged as a result of your request?

A. Yes, sir. [60]

Q. When did that meeting take place between the company representatives and the union representatives?

A. I couldn't give the exact date. It was some time in March.

Q. I ask you, Mr. Brown, if it wasn't on or about April 18, 1941. A. April 18?

Q. Yes.

A. A meeting was held at that time, but I think there was a meeting held previous to that. I am not quite sure, though.

(Testimony of; Seth R. Brown.)

Q. Would it be in the early part of April?

A. It would be in the early part of April or the last part of March, if held.

Q. Did you attend the meeting?

A. Yes sir, I attended all the meetings, with the exception of the first, in 1940.

Q. We are talking about 1941 now, Mr. Brown.

A. Yes, sir, I understand.

Q. Did you attend the first meeting in 1941?

A. Yes, sir.

Q. Between the company and the union?

A. Yes, sir.

Q. You think it was either the last of March or the first part of April that the meeting was held? Is that right?

A. I think the synopsis you have would give the exact dates. [61]

Q. April 18, 1941 is the record I have, that the first meeting was held.

A. Then that's probably correct.

Q. Who attended the first meeting on behalf of the union and the company?

A. I was present; Mr. Duke, and I think Mr. J. H. Patison represented the union, and Mr. C. H. Hoiles and Mr. Juillard, representing the register.

Q. The first name is Ralph, I believe? Is that right? What is his position with the company, do you know?

A. I understand he was advertising manager.

Mr. Ryan: What is his position with the company, Mr. Sargent?

(Testimony of Seth R. Brown.)

Mr. Sargent: Was and is advertising manager, that time and now.

Trial Examiner Moslow: Is that stipulated, Mr. Ryan?

Mr. Ryan: So stipulated.

Q. (By Mr. Ryan): What were the matters discussed at this meeting that you have just mentioned?

A. Well, a request to incorporate the same provisions in the wage contract that has been agreed to by the commercial printers in Orange County.

Q. Did you make that request to Mr. Hoiles and Mr. Juillard? A. Yes, sir, we did.

Q. What was the reply of Mr. Hoiles, if any?

[62]

A. Well, we took the position that it was the prevailing wage in Orange County, and he didn't seem to think very much of that.

Q. What did he say, Mr. Brown? Tell us what he said as best you can.

A. Well, he said they employed a greater number of printers who had membership in the Santa Ana Typographical Union, and he didn't think that the job scale should be comparable to his plant, and that while it wouldn't embarrass the Register to increase the wages, that if he did so——

Q. It wouldn't embarrass them how?

A. Well, financially.

Q. Did he say that?

A. Yes, sir. However, if he granted the printers an increase that other employees in other departments would want like treatment.

(Testimony of Seth R. Brown.)

Mr. Sargent: Read that, please.

(The answer was read.)

Q. (By Mr. Ryan): Is that what he said to you, Mr. Brown?

A. That's what he said to both of us, the committee.

Q. Mr. Hoiles said that to the committee?

A. Yes, sir.

Q. Were any other matters discussed at this meeting other than the wage question?

A. Well, we discussed the apprenticeship question again, [63] in reference to boys working on the machines.

Q. Who raised that issue for discussion at that meeting?

A. I think it was brought up by Mr. Patison, originally, one of our committee, who, I believe at that time was chairman of the office, chairman of the composing room.

Q. What was said in regard to that issue?

A. He stated that the office thought the boys should be privileged to go on the machine previous to the last year of their apprenticeship.

Q. Who stated that, Mr. Brown?

A. Mr. Hoiles, and in reply to that I stated that the laws of the International and the customs for years had been that the boys were not permitted to work on typesetting machines except during the last year of their apprenticeship.

Q. What did Mr. Hoiles say in response to your statement?

(Testimony of Seth R. Brown.)

A. He didn't follow it up to any extent, except that he disagreed with it.

Q. With respect to the proposal on apprentices made by the company back in 1940, March, 1940, when you stated that they made the proposal, that the company demanded full control over apprentices, did they say anything to you to indicate that they were still maintaining that position with respect to the proposals?

Mr. Sargent: I object to that question on the ground that it is my recollection that Mr. Brown did not testify [64] that the company was demanding full control over apprentices.

Trial Examiner Moslow: Objection overruled.

The Witness: May I have the question read?

Trial Examiner Moslow: Read the question.

(The question was read.)

The Witness: Well, this general discussion we had there would indicate that they were in the same frame of mind. I think it was a little later where the specific proposition was put up, a written notice.

Q. (By Mr. Ryan): Did Mr. Hoiles say anything at this meeting——

Mr. Sargent: Your Honor, I ask that that may go out and the witness be instructed to tell what was said, instead of characterizing the conclusions.

Trial Examiner Moslow: I grant the motion to strike the answer. Read that question again.

(The record was read.)

Trial Examiner Moslow: In other words, Mr.

(Testimony of Seth R. Brown.)

Brown, tell us what Mr. Hoiles said instead of characterizing it.

The Witness: He stated that he believed that an apprentice should be allowed to work on a machine before his sixth year.

Q. (By Mr. Ryan): Then did he say anything else, Mr. Brown?

A. Well, I don't recall that he did; there was a general discussion there. [65]

Q. Did you ask Mr. Hoiles to make any counter-proposals to the union, at this meeting of April 18, 1941?

A. Yes, sir.

Q. Tell us what you asked.

A. We simply asked if he had any—we would be glad to receive a proposition, if they were not satisfied with the one put forth by the Santa Ana Typographical Union; that if he had a proposition to settle the scale, that the union committee would give it thorough consideration.

Q. Did Mr. Hoiles reply to you or make any counter-proposal?

A. He didn't make any proposal.

Q. Did he make any comment on your request for a proposal?

A. Not that I recall.

Q. How did the meeting terminate? What were the circumstances that caused the meeting to terminate? Had you achieved any agreement on any issue?

A. No, sir, we had not reached an agreement on any issue. That's the April 18?

Q. Yes.

(Testimony of Seth R. Brown.)

A. There was one meeting there. Whether that was the April 18 or not, where Mr. Hoiles had submitted a proposition to have the union increase their hours from 37½ to 40 hours, at the same rate per hour. Whether that was at the April meeting I am not quite clear, but it was in one of the two meetings. [66]

Q. To refresh your recollection, I will ask you if Mr. Hoiles didn't propose to the union that the wage scale remain the same, that is, \$1.00 an hour, but that the union permit the union members to work 40 hours a week instead of 37½?

A. Yes, that's what happened. That is as I expressed it, in other words there.

Q. Did the union accept that proposal?

Mr. Sargent: You might get the date, just to locate it, Mr. Ryan.

Mr. Ryan: April 18, 1941.

Trial Examiner Moslow: Did you say this took place around April 18?

The Witness: Yes, sir.

Q. (By Mr. Ryan): Did the union representatives reject or accept this proposal?

A. The union representatives informed the publishers that we were opposed to the proposition, but that we would take it back to the Santa Ana Typographical Union for their jurisdiction.

Q. To the rank and file members?

A. To the rank and file members, and we did take it back, and they rejected it.

Q. What was your next step? Did you continue

(Testimony of Seth R. Brown.)

attempting to negotiate with the Register Publishing Company after that? [67] By "you," I mean yourself as a representative of the union.

A. Yes, we had another meeting April 26, I think.

Q. It was on or about April 26, 1941?

A. Yes, sir.

Q. Who was present at that meeting?

A. The same parties: Mr. Duke and Mr. Patison and myself, as representatives of the union; and Mr. Hoiles and Mr. Julliard on behalf of the Register.

Q. What took place at that meeting? What was said by the various parties and what were the issues discussed?

A. Well, the same issues were discussed. We informed the representatives of the publishers that the union had turned down the proposition to increase the hours at the same rate of pay, and stated that the union was in favor and desired to have an increase in the hourly wage, and we discussed that matter for the rest of the meeting, without reaching any conclusion.

Q. That one point of wages?

A. Yes, sir.

Q. Did the union make any proposal on wages at that meeting other than to say that you requested an increase in wages per hour?

A. We still maintained the wages adopted at the March meeting, and those were: \$1.07 an hour for six months and up to \$1.12 an hour. [68]

(Testimony of Seth R. Brown.)

Q. The one that had been adopted by the commercial houses here?

A. The same one, the same rates, at least.

Q. Did you ask for any counter-proposals from the union again at this meeting with respect to any other issues?

Trial Examiner Moslow: You say from the union?

Q. (By Mr. Ryan): From the company.

A. We asked them to submit any proposition, and we would take it under consideration.

Q. Did they? Did the representatives of the company, Mr. Hoiles, or the other man that was present, Mr. Juillard?

A. Not at that time.

Q. Did they make any proposal to you at that meeting? A. No, sir.

Q. Did you request the company to arrange for another meeting with the union for a later date?

A. Yes, sir.

Q. At the close of this meeting on April 18?

A. Yes, sir.

Q. What was said in that regard?

A. Well, Mr. Hoiles stated that we could have a meeting all right, but he didn't think we were going to do any good. We could talk about the weather or the war, or some other subject, but so far as he was concerned, there wouldn't be any increase in wages except as to lengthening of the hours. [69]

(Testimony of Seth R. Brown.)

Q. Did you at the close of that meeting definitely arrange to meet at a subsequent date?

A. No, sir. I think that another date was arranged, by the request of Mr. Duke.

Q. Mr. Duke being president of the union at that time? A. Yes, sir.

Q. Do you know whether Mr. Duke did arrange a meeting?

A. We were to hold a meeting on a Saturday. I think that was April—that was four days—about the 27th, I believe.

Mr. Sargent: Saturday would have been the 26th.

The Witness: That's when it was, Saturday was the 26th, was the day that we were to meet, and we were congregated out in the composing room waiting for the meeting, when Mr. C. H. Coiles came out and stated—do you want me to continue?

Q. (By Mr. Ryan): Tell what he stated.

A. He stated that the Register Publishing Company was going over the entire situation and they anticipated that they would have a proposition ready for this joint meeting on Saturday, but had been unable to complete their findings, and he therefore stated that the office would send me a registered letter on Monday, giving the position of the Register Publishing Company upon the wage question and contract.

Q. That would be Monday, April 28?

A. Yes, sir.

Q. Now, when you say “we were congregated

(Testimony of Seth R. Brown.)

out in the compos- [70] ing room," who do you mean?

A. The union committee; Mr. Duke——

Q. Who constituted the committee on that occasion?

A. Mr. Duke, Mr. Patison, and myself.

Q. When you say "Mr. Hoiles," do you have reference to the same gentleman, C. A. Hoiles, who has been present at the meetings you have been talking about?

A. Yes, sir.

Q. After you had been advised by Mr. C. H. Hoiles that the company would submit some counter-proposals to the union on Monday, April 28, did you leave the office of the company?

A. Yes, sir.

Q. Did you return to meet—strike that.

Did you, on April 28, 1941, receive any counter-proposals from the company?

A. I believe it was on the next day, Tuesday; on Monday Mr. Hoiles' secretary called me up and stated that they had been unable to get the proposition registered to me on Saturday, so it wouldn't reach me until Tuesday morning.

Q. Did you, on Tuesday morning, April 29, receive some written counter-proposals from the company?

A. Yes, sir.

Mr. Ryan: Mr. Examiner, may I have a five-minute recess, please?

Trial Examiner Moslow: We will recess for five minutes. [71]

(A short recess was taken.)

(Testimony of Seth R. Brown.)

Trial Examiner Moslow The hearing will come to order.

Mr. Brown, I think you testified there was a meeting on April 26th, in which you informed Mr. Hoiles that you rejected his proposition of an increase in hours with the same rate of pay?

The Witness: That must have been the 18th. We did not hold a meeting on April 26.

Q. (By Mr. Ryan): What did happen on the 26th, Mr. Brown?

A. I came here to have a conversation with the representatives of the publisher of the Register, and we were informed that a registered letter would be sent to my home address on Monday.

Trial Examiner Moslow: Before you get to that point, you also quoted a remark that you attributed to Mr. Hoiles about discussing the war or the weather. Was that also at the meeting of April 18?

The Witness: Yes, sir, when we adjourned; after we had adjourned.

Trial Examiner Moslow: Very well.

Q. (By Mr. Ryan) In your previous testimony there was some doubt as to whether or not a meeting had occurred in 1941, prior to April 18. I now ask you if it refreshes your mind that there was a meeting held between the representatives of the company and the union on April 2, 1941. [72]

A. I knew there was another meeting there, but I couldn't fix the exact date.

Q. Who were present at that meeting?

A. Mr. Duke——

(Testimony of Seth R. Brown.)

Mr. Sargent: This is April 3?

Mr. Ryan: 1941.

Mr. Sargent: April 3.

The Witness: Yes. Mr. Duke, Mr. Patison, and myself representing the union; and Mr. Hoiles and Mr. Juillard representing the publishers.

Q. (By Mr. Ryan): Did you discuss the wage scale submitted by the union as its proposal?

A. Yes, we discussed the new scale that had been adopted, and submitted to the publishers for consideration.

Q. That is, of course, the scale that you have already testified as adopted in the job printing houses here? A. Yes, sir.

Q. Here in Santa Ana. Was any agreement reached on wages at the April 3, 1941 meeting?

A. No agreement was arrived at.

Q. Did the union request the company representatives to make any counter-proposals at that meeting?

A. We asked them to submit any proposition that they desired on the wage question, and that we would give it, as a committee, consideration. [73]

Q. Did Mr. Hoiles or Mr. Juillard make any reply to your request that they submit counter-proposals at this April 3 meeting?

A. Oh, there was no proposition submitted.

Q. Did they make any reply? Did they make any reply, Mr. Brown, to your request that they submit counter-proposals? Did they say anything?

A. Nothing definite, no.

(Testimony of Seth R. Brown.)

Q. Did they say anything at all in that regard, as to whether or not they would submit counter-proposals?

A. Mr. Duke asked Mr. Hoiles if he would state, as he did the year previously, that he wouldn't consider any increase in wages, and Mr. Hoiles said no, he wouldn't take that position; and from that remark the union representatives were hopeful that some sort of a settlement might be worked out.

Mr. Sargent: That is a conclusion, not binding upon the respondent. If he made the remark, during the negotiations, I prefer that go into the record rather than the hopes of what the union has expressed on that.

Trial Examiner Moslow: I will let the record remain.

Q. (By Mr. Ryan): Did the representatives of the company and the union arrive at any agreement with respect to wages, hours, or working conditions, at the April 3 meeting? A. No, sir.

Q. At the conclusion of the meeting on that date was there [74] any arrangement between the company and the union representatives for the holding of a subsequent meeting?

A. You mean as to the April 3 meeting?

Q. Yes.

A. I don't know whether it was arranged when we adjourned or not, but a meeting was held in April——

Q. You did hold an April 18, 1941 meeting?

A. Yes.

(Testimony of Seth R. Brown.)

Q. I believe you have already testified what took place at the April 18 meeting? A. Yes, sir.

Q. You have already testified, Mr. Brown, that you received a written proposal from the company on or about April 29, 1941. Is that right?

A. Yes, sir.

Mr. Ryan: Mark this as Board's Exhibit next in order.

(Thereupon the document referred to was marked as Board's Exhibit No. 5 for identification.)

Q. (By Mr. Ryan): Mr. Brown, I show you Board's Exhibit 5 for identification, and ask you to identify it for yourself.

A. Yes, that is the communication I received by registered mail.

Q. From whom?

A. From Mr. C. H. Hoiles.

Q. It is a letter under the letterhead of Santa Ana Register, [75] addressed to Seth R. Brown, Special Representative of the International Typographical Union, 428 North Poinsettia Place, Los Angeles, California, appearing to bear the signature of one C. H. Hoiles. Is that right?

A. Yes, sir. [76]

Mr. Ryan: I offer Board's Exhibit 5 for identification in evidence.

Trial Examiner Moslow: Any objection?

Mr. Sargent: Just a minute.

No objection.

(Testimony of Seth R. Brown.)

Trial Examiner Moslow: Board's Exhibit 5 may be received.

(Thereupon the document heretofore marked as Board's Exhibit 5 for identification, was received in evidence.)

BOARD'S EXHIBIT No. 5

Register Publishing Co., Ltd.

Publishers of

Santa Ana Register

California's Most Consistent Newspaper

Santa Ana, California

April 26, 1941.

Seth R. Brown, Special Representative
International Typographical Union
428 N. Poinsettia Place
Los Angeles, California

Dear Mr. Brown:

In accordance with our recent negotiations, the Board of Directors of the Register Publishing Co., Ltd., have authorized me to place this proposition before you in writing.

Namely, we are willing to allow our printers to work forty (40) hours a week, instead of 37½, at the same rate they are now getting of \$1 an hour. This will give them a weekly increase of \$2.50, or approximately \$130 a year.

Also, we are to have complete control of the num-

(Testimony of Seth R. Brown.)

ber and work of our apprentices, as we see fit for efficient operation of our plant.

Hoping this meets with your approval, we are,

Very truly yours,

REGISTER PUBLISHING CO.,
LTD.,

C. H. HOILES,

CHH:BG

Secretary-Treasurer.

[Endorsed]: Filed 5/7/42.

Mr. Sargent: That date is the 26th, is it not?

Mr. Ryan: Yes, 1941.

Q. (By Mr. Ryan): After receiving Board's Exhibit 5, in evidence, what did you do with it? Did you take the document up with the union members?

A. No, sir, not at that time, because they had already rejected the provisions of it.

Q. Are the proposals set forth in the written document, which is Board's Exhibit 5, a repetition of the counter-proposals which had previously been given to the union by the company? Is that your contention?

A. Mr. C. H. Hoiles proposed at our meeting, one of our conference meetings, that the union work 40 hours instead of 37½, and thereby they would earn \$2.50 more a week at the same rate of pay, of \$1.00 an hour, but it was not coupled at that time with this apprenticeship proposition, with com-

(Testimony of Seth R. Brown.)

plete control of apprentices; that was in a section [77] by itself, and submitted as such by the committee.

Q. But evidence of these proposals had previously been submitted to the union and rejected by the union. Is that right? A. Yes, sir.

Q. After receiving the company's letter of April 26, 1941, which is Board's Exhibit 5 in evidence, did the union make any further effort to meet with the company——

A. I made an effort.

Q. ——with respect to bargaining?

A. In fact, I did have a meeting with Mr. C. H. Hoiles on the afternoon of April 30th, just a few hours previous to the strike, and I stated at that time to Mr. Hoiles that I had been requested by the president, Mr. Baker, of the International Typographical Union, to come in and endeavor to find some common ground to settle the controversy without a strike.

And I urged Mr. Hoiles to take back the proposition, eliminate the proposition in reference to the apprentices, and to confer further upon the wage question, and if he would do that I thought there was an opportunity to settle the controversy.

Q. You have reference to Mr. C. H. Hoiles?

A. Yes, sir.

Q. When did you meet with him? [78]

A. On April 30, in the afternoon, Wednesday, April 30, I think it was.

Q. In requesting that the company retract its

(Testimony of Seth R. Brown.)

proposal with respect to apprentices, as set forth in their letter of April 26th, what did Mr. Hoiles say, if anything?

A. Well, Mr. Hoiles refused to do so, and stated that the written communication expressed the position of the Santa Ana Publishing Company, and would not be deviated from.

Q. Did you make any further statements with respect to that position in the letter of April 26, 1941, to Mr. Hoiles?

A. I made the statement that the local union couldn't adopt a position of that kind, on account of the mandatory provisions that should be included in the contract, and that he was asking for something that the union could not grant, even if it desired to do it, which it did not.

Q. Why couldn't the union grant it?

A. Because that violated the laws of the International Typographical Union, and the very agreement itself, that had been in effect here, the oral agreement.

Mr. Ryan: Mark this as Board's Exhibit 6 for identification, please.

(Thereupon the document referred to was marked as Board's Exhibit No. 6, for identification.)

Q. (By Mr. Ryan) Mr. Brown, I show you a document marked for identification as Board's Exhibit 6, which is entitled [79] "Book of Laws of the International Typographical Union, in effect Jan-

(Testimony of Seth R. Brown.)

uary 1, 1941." I ask you whether or not this is the by-laws and constitution of the International Union, in effect in 1941? A. Yes, sir.

Q. At the time that you received the letter from the company, dated April 26th, which is in evidence, as Board's Exhibit 5, were these by-laws in effect? A. Yes, sir.

Q. Is there anything in the by-laws, which are Board's Exhibit 6 for identification, which would prohibit the union from agreeing to the proposal in regard to apprentices, that is incorporated in the letter of the company of April 26, 1941?

A. Well, there are several provisions in here. There is Section 17: "Local unions shall incorporate in their contracts with employees a section containing the necessary requirements to carry out the apprenticeship laws of the International Typographical Union."

Mr. Ryan: I offer Board's Exhibit 6 for identification——

Mr. Sargent: Before you do it, may I see it, please?

Mr. Ryan: I am sorry.

Trial Examiner Moslow: Mr. Brown, is there any difference in the by-laws relating to apprentices between 1940 and 1941? [80]

The Witness: I think not.

Trial Examiner Moslow: I would prefer you would compare it. If they are the same I would rather not receive the 1941 volume. I will give you a brief recess for that purpose.

(Testimony of Seth R. Brown.)

Mr. Ryan: All right.

(A short recess was taken.)

Trial Examiner Moslow: The hearing will come to order.

Mr. Ryan: We detected one change in the number of apprentices. Is that right, Mr. Brown?

The Witness: I don't think there is any difference in 1940 and 1941, Mr. Ryan. We both checked them.

Mr. Sargent: I don't think there is anything different there.

Trial Examiner Moslow: The rules for apprentices in the by-laws for 1941 are the same as for 1940?

The Witness: Yes, sir.

Trial Examiner Moslow: I will reject the Board's offer.

Mr. Ryan: I withdraw the offer.

Mr. Sargent: Your ruling, Mr. Examiner, was to prevent cluttering up the record?

Trial Examiner Moslow: That is right.

Q. (By Mr. Ryan) Did you point out to Mr. Hoiles in this discussion you had with him with reference to the company's proposal, of April 26th, which is Board's Exhibit 5, that you could not agree to the proposal because of your by-laws [81] and constitution?

Mr. Sargent: I object to that as leading.

Trial Examiner Moslow: I will sustain the objection.

What did you tell Mr. Hoiles when you met him that afternoon?

(Testimony of Seth R. Brown.)

The Witness: I told him I had been requested by the president, Mr. Baker, of the International Typographical Union, to call on him and make an earnest effort to avoid any trouble in the Register's composing room; that the local union was to meet that evening, and I suggested Mr. Hoiles withdraw the proposition in reference to the apprentices, which they could not accept even if they wanted to, and to confer further upon the wage question, and he refused to do so.

Q. (By Mr. Ryan) Was there anything else said at that meeting? A. No, I think not.

Q. What did you do then, if anything?

A. We had a meeting of the local union that evening, and I made a full report——

Mr. Sargent: Just a minute. I object to what took place at the local meeting unless it was brought home to the management.

Trial Examiner Moslow: Objection overruled.

The Witness: I made a full report——

Mr. Sargent: Do I understand your ruling to be, Mr. [82] Examiner, that he may testify as to whatever took place at the union meeting?

Trial Examiner Moslow: One of the allegations of the complaint was that the strike was caused by unfair labor practices. It certainly to my mind would seem relevant to show the causes of the strike, according to the union's and Board's contention, regardless of whether or not the respondent was present at the meeting.

He is about to tell us, apparently, as to why they

(Testimony of Seth R. Brown.)

went on strike. That is relevant, whether the respondent was there or not.

The Witness: We had a meeting of the local union that evening and I made a full report on my actions, in endeavoring to settle the controversy, and the union had previously asked the International Typographical Union for the privilege of taking a strike vote, provided they could not settle the controversy.

Q. (By Mr. Ryan) What controversy?

A. The controversy between the local union and the Register. The executive council of the International Typographical Union had given the local union the right to take a strike vote, and placed the matter in my hands, with power to act; and after full discussion there that evening as to what had transpired, and that the union had full knowledge that they couldn't accept the terms laid down, even if they so desired, [83] we proceeded to take a strike vote.

Q. The terms laid down by whom?

A. By the Register Publishing Company.

Q. Do you have reference to the terms as incorporated in Board's Exhibit 5?

A. The last communication there of April 26th.

Q. Do you have reference, also, to the terms laid down by the company in its proposals as far back as the beginning of the negotiations, in March, 1940?

A. That would be affected by any counter-proposition that had among its provisions any suggestions

(Testimony of Seth R. Brown.)

that were contrary to the mandatory laws of the International Typographical Union.

Q. From the inception of the bargaining back in 1940? Is that it?

A. Yes, sir. However, that was a specific provision, that caused the difficulty, which was the apprentices.

Mr. Sargent: In view of his last remark, I move his answer be stricken, as to what went back to 1940, because he testifies now it was concerning the apprenticeship clause.

Trial Examiner Moslow: I didn't so understand his testimony. I deny your motion.

Q. (By Mr. Ryan) Did the union hold a vote at that meeting to strike? A. Yes, sir.

Q. Was the vote carried in favor of continuing the strike? [84]

A. Yes. We must have a three-quarter majority, a three-quarter vote, and there was more than that number recorded.

Q. The requirement that the union must have a three-quarter majority to strike, before a strike, is a proper requirement of your by-laws?

A. Yes, sir.

Q. I show you, Mr. Brown, Board's Exhibit 4 in evidence, and direct your attention to page 73, to Section 2 of Article 19, and ask you whether or not that is the section you have reference to when you say that the union members vote by a three-quarter majority before they can conduct a strike?

(Testimony of Seth R. Brown.)

Trial Examiner Moslow: What is the relevancy of this, Mr. Ryan?

The Witness: Yes, sir.

Trial Examiner Moslow: Just one second. Don't answer.

Mr. Ryan: My purpose is to show that the union did authorize a strike; that it was a strike carried out in accordance with the by-laws of the union, and it was——

Trial Examiner Moslow: Let the answer remain.

Q. (By Mr. Ryan) After obtaining this vote to strike, did the union contact the management of the company to advise them that a strike vote had been taken?

A. Mr. Duke, the then president, or vice-president—I guess he was president at that time—contacted Mr. Hoiles [85] on the evening after the strike was ordered.

Q. Mr. C. H. Hoiles? A. Yes, sir.

Q. That was the same evening that the vote was taken, only shortly after the meeting adjourned. Is that right? A. Yes, sir.

Q. Did the union send Mr. Duke to the management to advise the management that a strike vote had been taken?

A. That action was taken just previous to adjournment by the union.

Q. You sent Mr. Duke to—— A. Yes, sir.

Q. What were the instructions given to Mr. Duke, if you know, at this meeting?

A. Well the instructions were that he should

(Testimony of Seth R. Brown.)

call on Mr. Hoiles and acquaint him with what had transpired, and request a compliance with the scale of the union.

Q. What was the next step taken by the union in this matter? Did you proceed to call your strike?

A. They proceeded to call all the union employees out of the composing room.

Q. When did the strike actually begin?

A. Around 11:00 o'clock at night, April 30th.

Q. 1941? A. Yes, sir. [86]

Trial Examiner Moslow: The strike vote was taken April 29th?

The Witness: 30th.

Q. (By Mr. Ryan) Has the union maintained a picket line in front of the plant of the Santa Ana Register Publishing Company? A. Yes, sir.

Q. Continuously since the inception of the strike? A. Yes, sir.

Q. Did you, after the strike, again continue your efforts to negotiate with the Register Publishing Company, Ltd., with respect to wages, hours, and other working conditions?

Mr. Sargent: I object to the question in the form in which it is asked.

Trial Examiner Moslow: I will sustain the objection.

Q. (By Mr. Ryan) Did you make any effort to negotiate with the company with respect to wages, hours, and working conditions, after the strike began?

(Testimony of Seth R. Brown.)

Mr. Sargent: Same objection.

Trial Examiner Moslow: I will sustain the objection.

Did you meet with the company again after the strike began?

The Witness: No, sir.

Q. (By Mr. Ryan) Did you have any conversation with any representative of the company since the strike began? [87]

A. Yes. I had a conversation over the telephone with Mr. C. H. Hoiles.

Q. And when was that conversation and what was it about?

A. It was the same time in May, 1941, and it was in reference to the suggestion by the Conciliation Division of the Department of Labor, that both sides submit the controversy to arbitration.

The local union of the Santa Ana Typographical Union agreed unanimously to arbitrate, and the Conciliator for the Department of Labor was requesting Mr. Hoiles to do likewise.

Not having anything definite as to the position of the Register upon the request, after a period of ten days I called Mr. Hoiles on the phone and asked him what the Register was going to do with reference to arbitration. He stated that they hadn't decided what to do, that it stood under consideration. I says, "You have had the matter now for ten days, possibly two weeks, and I think I am justified in taking the position that you have refused to arbitrate."

(Testimony of Seth R. Brown.)

"Well," he says, "that's all right, if that is your position," and hung up.

Q. Did you have more conversations with any representative of the Register Publishing Company after this? A. No, sir, I did not.

Q. Did you attend a meeting of the union on or about July 25, 1941, in which the question of requesting reinstatement [88] for strikers—

Mr. Sargent: Just a minute. Whatever may be the position of the Examiner with regard to what caused the strike, I submit that what happened later on should not be a matter where Mr. Ryan should lead the witness.

Trial Examiner Moslow: Reframe your question.

Q. (By Mr. Ryan) Did you attend a meeting of the union, the Santa Ana International Typographical Union, on July 25, 1941?

A. Yes, sir.

Q. Can you tell us what transpired at that meeting?

A. The union adopted a resolution to send a letter to the Register Publishing Company requesting a renewal of negotiations, and the reinstatement also of the union—former union members of the composing room.

Mr. Ryan: Will you mark this, please, as Board's Exhibit 7 for identification?

(Thereupon the document referred to was marked as Board's Exhibit No. 7, for identification.)

(Testimony of Seth R. Brown.)

Q. (By Mr. Ryan) Mr. Brown, I show you a document marked Board's Exhibit 7 for identification, and ask you to tell us what it is, if you can.

A. That is the action taken by the union on that date and transmitted to the Register Publishing Company.

Q. Board's Exhibit 7 purports to be a copy of a letter [89] addressed to Mr. C. H. Hoiles, business manager of the Santa Ana Daily Register, Santa Ana, California, dated—not dated—signed "Yours truly, Santa Ana Typographical Union, No. 579," bearing signatures of J. W. Jones, president, C. E. Fisher, secretary. Is that the document that you sent to the Register Publishing Company?

A. Yes, sir, a copy of it.

Mr. Ryan: A copy. I offer Board's Exhibit 7 for identification in evidence.

Mr. Sargent: No objection.

Trial Examiner Moslow: What is the date?

Mr. Ryan: It is not dated, but it appears in the letter when the action was taken.

Mr. Sargent: Probably about the 25th of July.

Trial Examiner Moslow: Is that agreed?

Mr. Sargent: No, about the 25th or 29th. It was just after the meeting of the 25th.

Trial Examiner Moslow: Is that stipulated?

Mr. Ryan: Yes.

Trial Examiner Moslow: Board's Exhibit 7 will be received in evidence.

(Thereupon the document heretofore marked

(Testimony of Seth R. Brown.)

as Board's Exhibit 7, for identification, was received in evidence.)

BOARD'S EXHIBIT No. 7

Live each day so that you can look any man in the eye and say: "I buy under the union label, shop card and button"/

Santa Ana Typographical Union, 579

P. O. Box 51, Santa Ana, California

Member Southern California Typographical
Conference

Mr. C. H. Hoiles, Business Manager

Santa Ana Daily Register

Santa Ana, California

Dear Sir:

At a meeting of Santa Ana Typographical Union #579, held on Friday, July 25, the following action was taken by unanimous vote:

The union requests a meeting with the Santa Register Publishing Company for the purpose of renewing negotiations and reaching an agreement for the reinstatement of the former union employees of the *The Santa Daily Register*.

Yours truly,

SANTA ANA TYPOGRAPHI-
CAL UNION #579

J. W. JONES

President

C. E. FISHER

Secretary

(Testimony of Seth R. Brown.)

Q. (By Mr. Ryan) Mr. Brown, after sending the document, Board's Exhibit 7 in evidence, to the Register Publishing [90] Company, did the union receive a reply to that document? A. Yes, sir.

Mr. Ryan: Mark this as Board's Exhibit 8 for identification.

(Thereupon the document referred to was marked as Board's Exhibit No. 8, for identification.)

Q. (By Mr. Ryan) Mr. Brown, I show you a document marked Board's Exhibit 8 for identification, which is a letter under the letterhead of the Register Publishing Company, Santa Ana Register, addressed to Santa Ana Typographical Union, No. 579, Santa Ana, California, dated August 2, 1941, and appears to bear the signature of H. C. Hoiles. I ask you whether or not that is the letter you received from the company in reply to Board's Exhibit 7, which is in evidence?

A. Yes, that is the letter. It is signed by C. H. Hoiles.

Mr. Ryan: Let the record be corrected to read "C. H." I misread it.

Mr. Sargent: No objection.

Trial Examiner Moslow: Board's Exhibit 8 will be received.

(Thereupon the document heretofore marked as Board's Exhibit 8, for identification, was received in evidence.)

(Testimony of Seth R. Brown.)

BOARD'S EXHIBIT No. 8

Register Publishing Co., Ltd.

Publishers of

SANTA ANA REGISTER

California's Most Consistent Newspaper

Santa Ana, California

August 2, 1941

Santa Ana Typographical Union #579

Santa Ana, California

Attention: Mr. J. W. Jones, President and
Mr. C. E. Fisher, Secretary

Gentlemen:

We acknowledge receipt of your letter of recent date which advises us of the action of your Union as of July 25th last.

The Santa Ana Register has never refused to negotiate with you and will not refuse to negotiate with you now. Before sitting down with you, however, we should point out that since your members went out on strike on May 1st last, nearly three months ago, it has been necessary for us to employ others to take the places of those who went out on strike.

These new employes have now become a part of the establishment and we do not feel, in fairness to them, that we can replace them now. Furthermore, shortly after your members went out on strike, we offered, through your Mr. Duke then local Presi-

(Testimony of Seth R. Brown.)

dent, to take back any of your members who were out on strike, whom we believed could be utilized if they returned to The Register because of vacancies we had at that time. These men did not return, however, and it was necessary to fill the vacancies by employing others who are now a part of our staff.

On behalf of the Management I also feel it necessary to indicate to you that there has been no change in our situation since the Union and the Management found it impossible to get together on the questions of increased wages and apprentices.

If you wish to sit down with us, in view of what I have written, the Management will certainly not refuse to confer with you. We think it only fair, however, that before doing so you should be given our attitude, as outlined above.

Sincerely,

REGISTER PUBLISHING
CO., LTD.

By C. H. HOILES

Q. (By Mr. Ryan) Since receiving the letter of the company, which is in evidence as Board's Exhibit 8, has the union contacted the Register Publishing Company in any manner, personally or by letter? [91]

(Testimony of Seth R. Brown.)

A. Not officially, unless it has been by some individual.

Q. Have the strikers ever been reinstated to the employ of the Register Publishing Company, Ltd.?

A. No, sir.

Mr. Ryan: I have no further questions. You may cross examine.

Trial Examiner Moslow: We will recess for five minutes.

(A short recess was taken.)

Trial Examiner Moslow: The hearing will come to order.

Cross Examination

Q. (By Mr. Sargent): Mr. Brown, in your long experience you have seen a great many I.T.U. contracts with large and small shops, haven't you?

A. Yes, several.

Q. "Several" is being very conservative, isn't it? You have probably seen hundreds, haven't you?

A. I think so, yes.

Q. Isn't it true that even today, when clauses are somewhat more standardized than was the case formerly, that there is quite a variation between the clauses of the large and small newspapers?

A. Well, there is some differential. So far as the work they shall perform in the first five years, yes.

Q. Are you familiar, for example, with the contract now in existence in San Diego between the Typographical Union and [92] the papers there?

(Testimony of Seth R. Brown.)

A. No, I don't know all its provisions.

Q. Would you be surprised to know that there were a great many changes in that contract under the terms of the Los Angeles contract and the contract for other papers in Southern California?

A. Oh, I wouldn't be surprised, no. The——

Q. In other words, it is a normal thing, when you have a negotiation of I.T.U. contracts, to take into consideration the things which are of importance to the local union and to the local paper? Isn't that correct?

A. If the International mandatory laws are complied with, yes.

Q. And are you familiar with the practice whereby, when the local in a given community, and the paper, want to have something which is peculiar to them, that they write back and get waivers from the I.T.U. in regard to it?

A. You mean a waiver in a mandatory law?

Q. No. I am talking about a waiver on a clause which would ordinarily not be agreed to by the executive committee, but which is approved by the particular local.

A. Approved by whom?

Q. By the I.T.U. Executive Committee.

A. The executive committee doesn't approve it. The president approves it. [93]

Q. All right. You are familiar with many instances, are you not, when a contract is negotiated by the local union and paper, that the draft is sent back before the contract actually is final between the two parties, and an international officer, the

(Testimony of Seth R. Brown.)

president or some other appropriate official, will give a leeway whereby the particular contract may be changed to suit the local and the paper who have already agreed upon it?

A. No, I am not familiar with that. I am familiar with the fact that scales when adopted by a local union are sent to the president of the international for approval, before being presented to the local paper, to see whether they are in accordance with international law, and if not in accord with the international law, he points out what it is, and sends it back to the local union, and those changes are made before it is submitted to the publishers.

Q. Isn't it true that the only scales which are a matter of international law are those almost sub-standard scales below which no contract can go, and all other scales are a matter of negotiation between the paper and the local?

A. I don't know as to that. I don't know exactly what you are trying to arrive at there.

Q. Never mind that. Never mind what I am trying to arrive at. Just give your experience.

A. I would say the provisions in the contracts vary very [94] materially in different communities, but there are certain provisions that are incorporated in all contracts that are underwritten.

Q. Do you mean to indicate the clauses in all contracts with regard to apprentices are the same?

A. No, I don't mean to say that.

Q. Of course you don't.

A. I didn't so state.

(Testimony of Seth R. Brown.)

Q. In other words, clauses with regard to apprentices, change according to the situation in the particular plant and according to the agreement which is arrived at tentatively, subject to International approval, between the local and the publisher. Isn't that true?

A. Yes, that is what you have got——

Q. Let me ask you this:——

Mr. Ryan: Just a minute. The witness wants to finish his answer.

Mr. Sargent: I am sorry. Go ahead.

The Witness: That is subject to the ratio in effect under international law, as to how many apprentices they are expected to be permitted to have.

Q. (By Mr. Sargent): Don't you know of contracts where a greater percentage of apprentices is permitted, because of the local situation, than are contained in the by-laws in evidence here today?

[95]

A. I don't know of my own knowledge, no; but there may be contracts in existence where publishers are given more apprentices than they have been given in Santa Ana. I don't know. But I don't know of any contracts where the provisions of international law are not adhered to.

Q. Don't you know of any contracts where there are more apprentices than one to every five journeymen?

A. No, I don't know, of my own knowledge, of any such underwritten by the president of the International Typographical Union.

(Testimony of Seth R. Brown.)

Q. Would you be surprised if I showed you contracts where that is done, in certain isolated cases?

A. I would be surprised if it had the approval of the president of the International Typographical Union.

Q. You can't have a contract between a local and a publisher without the consent of the International Typographical Union?

A. Oh, yes, you can.

Q. Doesn't it all go to the International before it is signed?

A. Yes, but they are not all signed.

Q. If an International officer sends back word to the local that they can't sign, they don't sign it, do they?

A. Supposing they have already signed it.

Q. You don't know that even in regard to the subject of [96] apprentices there is a wide variation in the type of clauses in the various local contracts throughout the Southwest?

A. I think that is true with reference to matters open for negotiation.

Q. You said a few moments ago that there was something in the international by-laws, constitution and by-laws, which prohibit the acceptance of the management's approval, under date of April 26th, with regard to apprentices. Did you make that statement on the stand?

A. I think so, yes.

Q. Will you please show me what particular

(Testimony of Seth R. Brown.)

provision it is in the by-laws which prevents the acceptance of that proposal?

A. I think I read it here at the time.

Trial Examiner Moslow: Point it out again. Take the 1940 by-laws.

The *Section*: Section 17.

Q. (By Mr. Sargent): Will you read 17, please?

A. Yes, sir. "Local unions shall incorporate in their contracts with employers a section containing the necessary requirements to carry out the apprenticeship laws of the International Typographical Union."

Q. What is the requirement of the International Typographical Union to which this clause, Section 17, applies? A. What are the laws? [97]

Q. Yes. What is there in the law, or any part of the book there which says you can't train apprentices during the year, some year before the sixth year, in linotype or other machinery?

A. Section 13.

Q. Read Section 13.

A. "Arrangements should be made to have apprentices during the sixth year instructed on any and all typesetting and type casting devices in use in the offices where they are employed."

Q. Isn't that clause that for the better training of apprentices the I.T.U. takes the position that they must be trained by the sixth year, before they become journeymen, in full recognition of their new status? Isn't that true? A. No, sir.

(Testimony of Seth R. Brown.)

Q. Can you show me any clause there which says that they can't train apprentices until the sixth year?

A. No, I can't give any specific reference.

Q. No.

A. But that provision has always been recognized all down through the years——

Q. No, but——

Trial Examiner Moslow: Let him finish.

The Witness: ——as being the position of the International Typographical Union, that the apprentices are only permitted to work on a machine during the last year of their [98] apprenticeship.

Q. (By Mr. Sargent): And only apprentices and journeymen can work on machines. Is that correct? A. That is all, yes.

Q. In other words, the only people that can work on the linotype machines are the journeymen printers and sixth year apprentices. Is that correct?

A. In union offices, yes.

Q. Or in this office?

A. You mean as now constituted?

Q. As constituted prior to the strike on April 30th.

A. That is right, they couldn't, no.

Q. Do you know that during the first summer you ever worked on the paper, that the daughter of the publisher of this paper was permitted, with the consent of the union, to operate a linotype machine on which she hadn't had even three months experience? A. I haven't any knowledge, no.

(Testimony of Seth R. Brown.)

Q. If the evidence shall disclose that, you will be very much surprised, will you not?

A. I wouldn't say I would be surprised. I think you can get that information from some member of the union. I haven't the knowledge.

Q. No. But if it is true, that in the summer of 1939, 1940, a girl comes back from school, who is permitted with the [99] consent of the union to operate one of these machines, that would be totally contrary to the international law?

A. Was the product used?

Q. I don't know. But if she was permitted to operate one of the machines, it would be contrary to international law, would it not?

A. It would be, if the product was used. If the product was not used—if the person operating the machine were a relative or a student, I doubt very much if the union would want to insist on a proposition of that kind, providing the product was not used.

Q. So, if she was a relative there would be an exception made in that case?

A. I don't say that. I simply pointed out that if the product was not used, I don't think the local union would make an issue, especially with the family.

Q. I see. The question of whether or not the apprentices should be trained at the machines, the linotype machines, and other machinery, during the sixth year, was the real difference of opinion be-

(Testimony of Seth R. Brown.)

tween you and the management during the negotiations, both in 1940, and 1941, were they not?

A. One of the reasons.

Q. What else was particularly involved in your discussions, as a difference of opinion?

A. The unlimited number of apprentices. [100]

Q. At that time how many journeymen printers were employed at the Register plant?

A. You mean in 1940?

Q. 1940 and 1941 up to the strike?

A. Oh, I think about 22.

Q. 22?

Trial Examiner Moslow: Apprentices?

Mr. Sargent: No; journeymen.

The Witness: No; journeymen.

Q. (By Mr. Sargent): How many apprentices did they have? A. Three.

Q. Three; and under the by-laws, both in 1940 and 1941 and 1942 they would have been permitted to have four, would they not?

A. Yes, they would under that.

Q. As a matter of fact—

A. Except that the agreement was made that there be three.

Q. In other words, you had in your verbal agreement held the Register to a lesser number of apprentices, had you not, than the limit or proportion contained in the international laws?

A. By mutual agreement.

Q. It was one of the terms of the verbal agreement, as I understand it? A. Yes, sir. [101]

(Testimony of Seth R. Brown.)

Q. That was one of the things which the management was trying to get away from in its contract?

A. They wanted to have the sky the limit.

Q. They wanted more than three?

A. Yes; sure.

Q. I ask you whether there was anything in the international laws in 1940 or 1941, up to the time of the strike, which would have prevented you giving them more than three?

A. I think they were entitled to four under the law.

Q. And possibly five?

A. It might be. You would have to stretch it.

Q. Under a "stretch" interpretation, they are entitled to one for every five journeymen, or fraction thereof; that would have given them five, and you had an agreement whereby they could have only three?

A. That is right.

Q. And the management said that was working an unfair hardship upon it, and it wanted to have more than three?

A. No. He said he didn't want any restrictions upon the number they could employ.

Q. He said they wanted more than three.

A. Yes; but he didn't say four or five; he wanted complete control.

Q. Did you say "We will give you four or give you five"?

A. No, sir. It wasn't mentioned. [102]

(Testimony of Seth R. Brown.)

Q. During any of the negotiations did you ever offer to give them four or five?

A. Not in these negotiations; it wasn't requested. He wanted unlimited control.

Q. The answer was: You never offered a counter-proposition and said he could have four or five, did you? A. No, sir.

Trial Examiner Moslow: Where is the provision that limits the number of apprentices? What section is that?

The Witness: Section 20 and 21.

Trial Examiner Moslow: Contine.

Q. (By Mr. Sargent): Now, in all of these negotiations, Mr. Brown, you, at all times as representing the union, certainly were in good faith, were you not? A. Yes; I tried to be.

Q. You were bargaining in good faith, representing your union, at all times, in an effort to bring about a satisfactory conclusion, were you not?

A. Yes, sir.

Q. And yet, during these negotiations, you never told this employer, as a counter-proposal, that they could train apprentices earlier than the sixth year, did you? A. Train them on the machines?

Q. That is right.

A. I never told them so. [103]

Q. And you never in the negotiations told them that you would compromise by giving them four or five apprentices, when they asked for unlimited numbers?

A. They didn't ask for four or five.

(Testimony of Seth R. Brown.)

Q. Please answer my questions, as I put them. You never counter-proposed, when they asked for an unlimited number? A. No, sir.

Q. By saying they could have four or five?

A. No, sir.

Q. You didn't think that by failing to make a counter-proposal of that nature, that there was anything of bad faith in your negotiations, did you?

A. I was thoroughly imbued with the idea that three was sufficient for an office of that kind.

Q. But, in not making any counter-proposals of that nature, you didn't think you were doing anything other than in good faith, did you?

A. I didn't think anything about it.

Q. You believed just as strongly in your position that they should have only three, as the management did that they should have a larger number, didn't you? A. Yes, sir, I did.

Q. You knew, so far as the management was concerned, if it had had a larger number, it probably would have meant having [104] a less costly operation, from its viewpoint, in the shop?

A. I don't think so, no.

Q. The management told you, during the negotiations, it wanted more apprentices because it believed it could have a less costly operation, did they not?

A. They never so expressed themselves. As I understand it, they thought that the union was exploiting the apprentices and compelling them to

(Testimony of Seth R. Brown.)

serve six-year apprenticeships. That was their position, and we don't think so.

Q. You both had an honest difference of opinion, didn't you?

A. I don't know how honest theirs was. I know how honest ours was.

Q. Yours was an honest difference of opinion, and on that you had a position which you stuck to at all times throughout, didn't you?

A. We tried to conciliate.

Q. You never offered a compromise once on anything with regard to apprentices, did you?

Mr. Ryan: Mr. Examiner, I object to the entire line of questioning.

Trial Examiner Moslow I will sustain the objection.

Mr. Sargent: I have no desire to encumber the record with unnecessary things, but remember, Mr. Examiner, that in this one witness is the heart of the whole matter.

Trial Examiner Moslow: You have asked the same questions [105] about three times.

Q. (By Mr. Sargent): On the question of wages there was an opportunity there to negotiate back and forth, and eventually there might have been an opportunity to get to a compromise. Is that right?

A. Yes, sir.

Q. Now, when you, around March 1, 1941, had entered into a negotiation with the commercial plants for a wage scale, was the respondent, that

(Testimony of Seth R. Brown.)

is, the Santa Ana Register, represented in those negotiations? A. No, sir.

Q. As a matter of fact, you never told them about those negotiations at all, until after they took place, did you? A. I can't say.

Q. Well, you had never done so?

A. I had nothing to do with the job scale when it was presented here, and signed.

Q. And when you had that contract with the various commercial shops providing for an increase above the \$1.00 per hour, that established what, in your opinion, was a prevailing rate of wages. Is that right? A. We so construed it.

Q. Up to that time it had been \$1.00 an hour?

A. Yes, sir.

Q. So that during the negotiations in 1940 the prevailing [106] rate of wage had been \$1.00 an hour, had it not? A. Yes, sir.

Q. When you were, therefore, negotiating with the Register's representatives in 1940, what, in fact, you had been doing was trying to get the Register to agree to a wage scale which was above the going scale. Isn't that true?

A. Well, of course, Mr. Sargent, scales are opened by the local union, and it so happened the newspaper scale was opened previously to the commercial scale.

Q. I understand that, but still it is a question, and there is nothing wrong about doing it, Mr. Brown. If I were representing a union I would certainly do it. But, what you were asking the

(Testimony of Seth R. Brown.)

paper to do was agree to a scale at that time above the prevailing scale, were you not?

A. You mean here?

Q. Yes. Yes. A. Yes, that is right.

Q. And the management simply took the position that it wouldn't go above the scale in 1940?

A. No, they didn't say that.

Q. That was the effect of the negotiations.

A. I don't think it was discussed, about what wages were paid in commercial offices, in 1940. It was in 1941.

Q. In 1941, after you had had this first agreement with respect to the commercial shops, you took the position that [107] then, after that contract, there had been a new and a higher wage scale put into effect. Is that right?

A. I think that was one of our contentions, yes.

Q. And you said to the management of this paper that now that the commercial scale is \$1.07, that that sets a new prevailing wage scale for this community. Is that correct?

A. I think the communication itself will be the best indication of how the union felt. It could be introduced.

Q. Now, Mr. Brown, after all, you are an expert in these matters. You have been in the labor business for 45 years in this union——

A. You are getting a little ahead of me there.

Q. I am just trying to probe your mind on something very important in this case.

You took the position during these negotiations,

(Testimony of Seth R. Brown.)

to which you have testified, that a new prevailing wage scale had been adopted, through the March 1st contract, with the commercial shops, did you not?

A. Yes. That was one of our contentions, but we contended that the cost of living and other matters, and the general raising of wages in the other jurisdictions, had quite an important bearing on it.

Q. Did you ever have any discussion with the management about the fact that national advertising was going down? I am talking about 1941, now.

[108]

A. I believe there was some talk about it. We didn't bring it up. It was brought up by the publishers.

Q. The management, of course, brought this up, didn't it? A. I will say they did.

Q. And Mr. Hoiles made the remark to you: "Our national advertising is down. We are getting to a place where our revenues are cut. Where is the money going to come from to pay increased wages, if we agree to them?"

Didn't he say that, in substance?

A. He said they couldn't raise the newspaper rates, but he did, afterwards.

Q. At that particular time he said he couldn't do it, did he not? A. That is right.

Q. At all times when you have referred in your testimony to Mr. Hoiles, it is to the gentleman sitting on my left, Mr. C. H. Hoiles?

A. That is right, Mr. Sargent.

(Testimony of Seth R. Brown.)

Q. And at no time when you mentioned Mr. Hoiles did you mean other than Mr. C. H. Hoiles?

A. I never met Mr. R. C. Hoiles personally.

Q. Now, when you establish a prevailing scale and it becomes established as a prevailing scale, are you then willing to negotiate that scale downward for some particular individual paper, like the Register? [109]

A. Well, not unless the conditions warrant it.

Q. And you saw nothing in the conditions in 1941 which would warrant it, in your opinion?

A. In reducing the scale?

Q. After March 1, 1941, in going below the new commercial scale?

A. We thought the newspaper wage was too low here. That is the reason why we adopted a new scale.

Q. And you held to that scale throughout, in these negotiations, did you not?

A. We did, as a committee, although I suggested to Mr. Hoiles on this afternoon before the strike, if he would withdraw his proposition in reference to the apprentices and get together, we would further confer upon the wage situation. I didn't promise we would do anything, but I did say I would do everything in my power to avoid any trouble down there.

Q. Did you at that time secure any authority from the local to go back on what you call the prevailing scale?

A. No, sir. I had no such authority, but I am

(Testimony of Seth R. Brown.)

one of those individuals, if I find a situation that I believe a person should step in and try to avoid trouble, that's what I intend to do. I would have done that, if I had been met halfway on the proposition.

Q. That shows you are a good negotiator, and I won't quarrel [110] with you on that.

In any event, no authority was given to you, or given on the part of the union, to suggest or to agree to any scale lower than the March 1, 1941 new commercial scale?

A. No, sir.

Q. And in adhering to that scale you believed that you were doing the right thing, and that you were negotiating in the best of good faith, did you not?

A. Yes, sir.

Q. Now, let us go back for just a moment to the provisions of the so-called verbal agreement, which as I understand from your direct testimony had been in effect from about 1937 until some time, as to which you have given no particular date, in 1940, or 1941.

First of all, let me ask you this question: Did you mean to indicate upon your direct testimony that that verbal agreement was no longer in effect after March of 1940?

A. No, sir.

Q. As a matter of fact, that agreement was in effect up until the very day of the strike, was it not?

A. Yes, sir.

Q. And at all times, therefore, the management was bound by the terms of that verbal agreement? Isn't that so?

(Testimony of Seth R. Brown.)

A. They were bound by it, yes.

Q. And the reason why they couldn't have more than three [111] apprentices was because in that particular verbal agreement they had said "We will limit ourselves to those three apprentices only." Isn't that so?

A. Yes, but they never made any request for four apprentices.

Trial Examiner Moslow: Can we get a copy of the terms of the oral agreement, gentlemen?

Mr. Sargent: I don't know who has one. I have tried to get one, but haven't put my finger on one yet.

Mr. Ryan: I have a document here that I propose to establish by this witness as being an identical document with that which was in effect between the union and this company.

Mr. Sargent: Could I take a hasty look at it?

Trial Examiner Moslow: Why don't you show it to Mr. Sargent and see if you can agree on it? Off the record.

(There was a discussion off the record.)

Trial Examiner Moslow: On the record.

Q. (By Mr. Sargent) Mr. Brown, I have received from Mr. Ryan, counsel for the Board, and I understand he got it from Mr. Duke, the president of the union, a contract which is stated to be similar to the one under which the Register was operating from 1937 up to the date of the strike, or April 30, 1941, and which is also with the Santa Ana Typographical Union, No. 579.

(Testimony of Seth R. Brown.)

Will you glance at that and tell me whether or not in [112] your experience and from your information that is a similar contract to that which was in force at the Register prior to the strike?

A. Well, there was one proviison in here that was amended when the matter was submitted in 1939. That's part of subsection (a) of Section 2, "Working Hours." With that exception, it is practically the same.

Q. Generally speaking, it looks as though it was similar in terms to the other?

A. That is right.

Trial Examiner Moslow: You say "similar". Do you mean the same as——

The Witness: The same as the newspaper contract, yes, in general terms.

Trial Examiner Moslow: I don't understand what you mean by general terms. Is that identical with the agreement between the respondent and the local union except for paragraph 2 (a), or does it just bear some resemblance to it?

The Witness: I wouldn't say positively, but it looks to me to be the same contract as the newspaper contract.

Q. (By Mr. Sargent) It is a printed contract, where the name of the person with whom the contract was made has been written in. Is that true?

A. Yes, it's written in. The name is written in in all those contracts. [113]

Q. So that you believe, by reason of its being a printed contract, and from your experience of it,

(Testimony of Seth R. Brown.)

that it is identical except for the one clause to which you have referred?

A. It is, so far as my knowledge goes, but I wouldn't want to say positively it is the same.

Mr. Ryan: Mr. Sargent, I will stipulate it is an identical document with the contract which was entered into between the International Typographical Union and the company, the Register Publishing Company, Ltd., 1937, and that the qualification with respect to that clause, that the witness has testified about, paragraph 2 (a), was also identical, with the exception that in their discussions back and forth on that term, they agreed to draw some lines on the contract; but the contract as a physical document is identical with that of the contract entered into by the company and the union. I will stipulate to that.

Mr. Sargent: Would you care to stipulate approximately how many clauses there are in the contract? Between 30 and 40, would you say?

Mr. Ryan: Why not introduce it in evidence?

Mr. Sargent: Will you stipulate that there are at least 30 to 35 clauses of various kinds and description in this contract, Mr. Ryan?

Mr. Ryan: No, I won't, because I don't think it serves any real purpose. I think the best evidence is in the contract [114] itself, and the physical document should be in evidence, if we are going to discuss it.

Trial Examiner Moslow: You don't need to

(Testimony of Seth R. Brown.)

stipulate, Mr. Sargent. I can count the number of clauses.

Q. (By Mr. Sargent) Mr. Brown, —

Trial Examiner Moslow: Just a second. Is it agreed that is an identical contract, or what is your viewpoint?

Mr. Sargent: May we go off the record?

Trial Examiner Moslow: Off the record.

(There was a discussion off the record.)

Trial Examiner Moslow: On the record.

Mr. Sargent: From the information given by the witness, and also from the statements made by Mr. Ryan and Mr. Duke, and without knowing full particulars myself, I am willing to accept for the present at least, until I know to the contrary, that the document which I now hand to the Examiner for identification as Respondent's Exhibit 1 for identification is a similar contract to that which was in effect as a verbal contract between the Typographical Union, Local No. 579, and respondent, during the years 1937 through the strike, in April 30, 1941.

Trial Examiner Moslow: Mr. Sargent, can't you stipulate that the terms are identical with the terms of your contract, and if it should appear later that you were mistaken, I will allow you to withdraw from your stipulation. Meanwhile, I [115] would like to have some paper in evidence so we can follow this discussion.

Mr. Sargent: It is like asking a question of a witness and you don't know what the answer will be. I am so in ignorance of what the terms are——

(Testimony of Seth R. Brown.)

Trial Examiner Moslow: We will postpone the entire matter. Will you take the contract to your office and look at it over night?

Mr. Sargent: Yes.

Q. (By Mr. Sargent) Now, Mr. Brown, during the various discussions between you and the management of the Register in 1940, there were very few items of dispute between you. Is that right?

A. On wages and vacations with pay.

Q. Wages, vacations for pay, and what about apprentices?

A. I don't think—we went into the subject, of course, and that was a contention; but there was no—in other words, you seem to object to my stating that they didn't ask for four or five apprentices. They did not ask for any definite number of apprentices, so that we could have got together and discussed the question. They wanted unlimited numbers of apprentices.

Q. I understand your position perfectly. What I am asking you now is whether or not it isn't true that during the 1940 negotiations, the only three things which seemed to be in any [116] serious dispute between you related to: One, wage; two, vacations; and three, apprentices?

A. Yes, and to a lesser degree, upon a provision that upon one day a week they went to work at 6:30, I think, which was a violation of the laws providing for day and night work.

In other words, they went to work at 6:30 in the morning, without paying a night scale. As you

(Testimony of Seth R. Brown.)

know, the hours are from 7:00 in the morning until 6:00 at night, for day work; and from 6:00 at night until 7:00 in the morning for night work. And any work performed in the daytime, not in those hours, that is paid for at the night scale.

Q. I understand.

A. That wasn't a serious problem. It was discussed a little, and I don't think the office itself wanted to continue it, although they didn't give it up.

Q. I will ask you whether or not during the 1940 negotiations the management didn't agree to the union's position, and didn't change and somewhat more liberalize the viewpoint of the union, the hours of the day and night shifts, and meet the union's proposal?

A. There was nothing done at all. The negotiations were just terminated, left in status quo.

Q. During 1940 or 1941 didn't the management agree to the union's proposal about the hours, as to whether it was day or night shifts? [117]

A. I think they would have. I don't think he ever made any statement that they would, but I think he seriously doubted the question of going to work at 6:30 was beneficial to the office, and I think he would have been willing to terminate it. But it was in violation of the international laws, and had been called to the attention of the local union here by the International.

Q. Your judgment was, from the negotiations, the management would have interposed no objection

(Testimony of Seth R. Brown.)

to this proposal of the union, had other things been agreeably settled?

A. I don't know. I couldn't say.

Q. I thought you said a moment ago you thought the management would have agreed to that if other things had been taken care of?

A. I don't think they wanted to maintain a union shop, if they could avoid it. That's my private opinion, publicly expressed.

Mr. Sargent: I will ask that go out as non-responsive to the question.

Mr. Ryan: I object, and insist that the answer stay in the record. He has asked the witness' opinion as to whether the company would agree or not agree.

Trial Examiner Moslow: I will grant the motion to strike as to his opinion about the respondent's motives.

Q. (By Mr. Sargent) Mr. Brown, in the negotiations, if [118] you know, prior to March of 1940, were there various changes during the years 1938 and 1939 and thereafter, from the original terms of the original verbal agreement?

A. I couldn't say how many changes, Mr. Sargent. The wage question itself was taken up at various times, and any new laws that were considered mandatory by the International Typographical Union were inserted in future contracts.

Q. So that, from time to time, there were changes made each year in the original verbal agreement of 1937?

A. Yes, sir.

(Testimony of Seth R. Brown.)

Mr. Ryan: Mr. Examiner, in order to avoid confusion in the record, by referring to this agreement between the company and the union as the verbal agreement, I would like it understood, whenever that reference is made, it must also be borne in mind that that so-called verbal agreement was reduced to writing, and was a written, unsigned agreement of the terms of that so-called verbal agreement between the company and the union.

Trial Examiner Moslow: I understand.

Q. (By Mr. Sargent) In other words, the agreement was verbal, but the terms had been reduced to writing? Is that correct? A. Yes, sir.

Q. Were you, Mr. Brown, aware when you came to the negotiations in March 1940, and during the negotiations in 1940 and also in [119] 1941, of what the going wage scale was on such papers as the Santa Barbara, San Bernardino, Riverside and Pomona?

A. Well, the cities that you enumerate there I notice are all operating under non-union conditions, except Pomona, which has been unionized since then, and has an increase in the scale of \$2.50 a week.

Q. At that time were you familiar with the wage they were paying?

A. Well, I was more or less familiar, yes.

Q. And I ask you whether or not the wage scales which were being paid in those papers for similar typographical work were not the same scales which were being paid by the Register at the time?

(Testimony of Seth R. Brown.)

Trial Examiner Moslow: Your question is that the Register was paying the same amount of money as these non-union papers?

Mr. Sargent: That is right. At least as much.

Q. (By Mr. Sargent) Isn't that true?

A. I couldn't say definitely whether it is true or untrue. I know what the scale at Santa Barbara is right now, but I don't know exactly what it was at that time.

Q. Do you remember the scales at Santa Barbara, Pomona, San Bernardino, and Riverside were—whether the scales there were higher or lower for printers as compared with the respondent, in the years 1940 and 1941 up to the day of the [120] strike?

A. The scale in Pomona was \$1.00 an hour and there were negotiations for a new contract, just the same as there were down here.

Now, at San Bernardino, it is not under union conditions down there. They are operating with a non-union force, and any information that I would secure on the wages paid down there would be more or less from a third party. But I am sure that they weren't any lower or higher than paid here in Santa Ana.

Q. Yes. You and I, Mr. Brown, might agree as to union shops, but some other people don't. I simply took those, knowing they were non-union shops, as comparable cities where, whatever the reason might be, similiar scales were in effect at the time.

(Testimony of Seth R. Brown.)

A. How about Glendale and Santa Monica, and a few more? Ventura?

Q. Of course, you are talking about papers I sometimes negotiate with. Remember, you are getting up into metropolitan scales when you are talking about Glendale and Santa Monica. We hadn't better go into that.

A. Well, I simply——

Trial Examiner Moslow: Don't volunteer any information, until you are asked questions.

Q. (By Mr. Sargent) Now, I believe you suggested that at [121] the meeting on May 20, 1940, the company, that is, the respondent, submitted seven proposals.

Trial Examiner Moslow: Did you say May 20th?

Mr. Sargent: May 20, 1940.

Mr. Ryan: It is March 20th, isn't it?

Mr. Sargent: March 20th, I am wrong.

Q. (By Mr. Sargent) March 20, 1940, they submitted seven proposals to the union at a meeting at which you were present. Is that correct?

A. No, I wasn't present at the meeting.

Q. I had you down as saying you were present.

A. No, sir.

Q. Weren't you and Mr. Taylor of the union present at that meeting?

A. You mean present at the meeting of the publishers when those points were submitted?

Q. Yes.

A. No, sir; they were submitted during the interim between the first meeting held, at which I

(Testimony of Seth R. Brown.)

was not present, and the next meeting, at which I was present.

Q. Weren't the points discussed at the March 20th meeting?

A. Either that meeting or the next meeting. I think at both meetings.

Q. Regardless of that, you were present at a meeting when the Register's management, through Mr. Hoiles, did submit [122] seven proposals to the union. Is that right?

A. I was there when it was discussed, yes. I wasn't there when they were submitted.

Q. All right. You were present when the seven proposals submitted by the management were discussed, at a union meeting?

A. Yes.

Q. At that meeting did Mr. Hoiles indicate that there was a vast difference between the scale, and experience needed for straight matter work, and the more or less complicated work, such as complicated display advertising matter?

A. He talked about it, yes.

Q. Did you agree that in so far as the amount of the scale was concerned that there was a wide difference in the two types of work?

A. We didn't agree to his interpretation, no.

Q. As a matter of fact, isn't it true, Mr. Brown—

A. As a matter of fact, there are very few machines on which only straight matter is set on, what he is calling straight matter, and that is the news. But in a newspaper office, the operators as a rule

(Testimony of Seth R. Brown.)

have to perform all classes of work on the machines, liners, and ad display, and baseball scores, and so forth, tabular work, and it is only during certain hours of the day that the whole force is thrown upon the news matter. Most of those operators [123] perform these various tasks during a day.

Q. I will agree with what you said. I just wanted to get from you certain statements, which I think you are perfectly willing to make, and which I believe would be true; granted that an ordinary man, machinist-operator, has to do a great many things, if a person were only called upon to do straight matter, that would be a much easier job, than when he is doing a lot of things.

A. You mean if he only had to perform that work all the while?

Q. That task, of printing just straight matter doesn't require the skill that the other duties which you have testified to require. Isn't that true?

A. Why, it doesn't require the skill some other matters do, no. Of course not.

Q. So that, when you objected to the 75 cents an hour for the men on straight matter, your objection was that there shouldn't be any distinction between operators, even though you recognized that this was a simpler type of work than the general display advertising and other matters? Is that true?

A. Our position was that all scales were minimum scales, and if the publisher has anybody in the composing room that is not competent to earn

(Testimony of Seth R. Brown.)

this minimum wage, he has got recourse to discharge that particular individual. [124]

Q. Do you think that nobody should be employed in the composing room except as he gets a journeyman's minimum scale?

A. I think he should get at least a journeyman's minimum scale.

Q. At least the journeyman's minimum scale. Is that right? A. Sure.

Q. What about all these contracts where you have super-annuated—or people who are 60 or 65 years old, so that it is a question of experience, or whether the employer wants to keep them, and the union has obligations to them; what happens then?

A. That is in isolated cases. I don't think there is one in this office, and very few offices have them. Occasionally they have them, yes.

Q. You know I could give you a number of cases where they have them, don't you?

A. Yes.

Q. And you also know there are exceptions to the ordinary journeyman's scale, don't you?

A. Yes.

Q. If a particular publisher has a great deal of ordinary news matter as contrasted with complex display advertising, it is possible, is it not, that certain people might be employed full time on the straight matter alone? Isn't that [125] true?

A. They might be employed, yes; but they might not be competent. I don't know.

(Testimony of Seth R. Brown.)

Q. Your position is not that the work should be paid at as high a rate as something more skilled, but that every person in the place, except for superannuates, or apprentices, or proof boys, but everybody except for superannuates or sixth year apprentices should be paid the minimum, the minimum for everybody?

A. Our position is that the pay should be at least the minimum scale of the union; and if a man shows himself to be more competent, he should get an additional rate per hour, week, day, or hour, wherever the occasion arises. That is my position on that.

Q. Is it common practice for journeymen printers to receive above the scale?

A. A great many do, yes.

Q. There are cases——

A. Any number of them.

Q. Isn't it true the average case is that the man receives the scale?

A. He is to receive the scale.

Q. I mean, he doesn't receive above the scale?

A. I think the majority of people do not receive over the scale, if that is what you mean. [126]

Q. Yes. Now, then, is your objection to the suggestion made by the management that those on straight matter receive only 75 cents per hour instead \$1.00, back in 1940, was it your objection that it would reduce the minimum scale, or was it that the work itself was worth as much as advertising display, and so forth?

(Testimony of Seth R. Brown.)

A. We maintain that any work performed by an operator in a composing room should be paid what it is worth, and if what it is worth equals—in other words, a man, no matter what he is employed at, whether it is on straight matter or display matter or any other matter, he should receive at least an equal scale; this man may be a mere straight matter operator, but may be the swiftest man in the office, and may produce the largest string of anybody. But the office might not construe him as being what they called a competent operator.

Q. Would you think that the man who was just fulfilling his ordinary production competency, of so many strings, with no surplus, should be paid the same as the man who was producing 50 per cent above the minimum required?

A. I think every person employed in a composing room should receive a minimum scale of the union, at least the minimum scale, and if those men are not competent to receive that scale, the office has recourse to discharge them.

Q. Why does the union object, providing it doesn't drag [127] down the scale of those who are experienced, all around machinists and operators, such as those who have to do with intricate display advertising, why does the union object to there being a sub-minimum, if you please, for doing what is in reality a much more simple task, requiring much less experience?

Trial Examiner Moslow: Are you questioning

(Testimony of Seth R. Brown.)

this man about the union's general policies, or about these negotiations?

Mr. Sargent: On these negotiations, because these were part of these negotiations.

Trial Examiner Moslow: Will you reframe your question?

Q. (By Mr. Sargent): Why did you object in these negotiations, Mr. Brown, to the management's proposal that a person who was on straight matter alone might receive only 75 cents per hour as a minimum, providing it didn't take or drag down the general scale of those who were engaged in much more intricate work such as display advertising?

Mr. Ryan: Well,—

Trial Examiner Moslow: I will sustain the objection. It is repetitious.

Mr. Sargent: I don't think he ever answered.

Trial Examiner Moslow: I think he answered three times that he thought the minimum should be a dollar, regardless of the class of work performed. [128]

Mr. Sargent: Mr. Examiner, that doesn't answer my question.

Trial Examiner Moslow: It isn't an answer to the question, that the minimum should be a dollar, regardless of the type of work?

Mr. Sargent: I was trying to get the basis for the reason. In other words, I wanted to find out why he had objected so strenuously to Mr. Hoiles' proposal, which, of course, would have led the way to

(Testimony of Seth R. Brown.)

higher wages for the other people, eventually, had it been put into effect; because you could have run your composing room for the same cost; I don't like to use the word "substandard" but 75 cents would have permitted you to have leeway.

Trial Examiner Moslow: Are you contending that the company proposed to increase the rate for the classification above a dollar an hour?

Mr. Sargent: It didn't get to it, because the union wouldn't agree to any classification of less than a dollar an hour.

Mr. Ryan: There is nothing in this record——

Trial Examiner Moslow: Let us not argue about it. Let us proceed.

Mr. Sargent: May I have the question read, please?

(The question was read.)

Trial Examiner Moslow: And I think I sustained the [129] objection to that question.

Q. (By Mr. Sargent): Now, coming to the question of apprentices, an apprentice who has been working faithfully for two or three years could easily learn the work of the machines prior to his sixth year, could he not?

A. Oh, he could, yes. He could learn the machine, but he wouldn't be a printer.

Q. I understand.

A. He would be one of these straight matter operators.

Q. I see. But it would give a greater number

(Testimony of Seth R. Brown.)

of people to the shop who would be able to use the machines at the same time, would it not?

A. It would what? I don't understand the question.

Q. I will reframe it. If you had apprentices, even though they had only two or three years, who could still operate the machines, on straight matter, you would have, in the event of a rush, a lot of people who could operate the machines?

A. That all depends on your equipment. I think all the machines over here were manned most of the time.

Q. Couldn't you answer my question yes or no? It is obvious, isn't it? You would have a greater number of people to operate the machines, in any given plant?

A. If you were permitted to do so, probably so.

Q. The more leeway the management has in a composing room, [130] the less its proportionate cost for getting out production. That is true, is it not?

A. Probably so.

Q. It has been true for many years, has it not, that the union has sought through its various locals, internationally, to hold to a minimum the number of apprentices in any job?

A. They had discouraged it, in many instances, yes.

Q. As a matter of fact, you and I know of certain contracts where no further apprentices beyond those employed are permitted. Isn't that true?

(Testimony of Seth R. Brown.)

A. In some contracts, yes, I believe. I couldn't give them to you specifically.

Mr. Ryan: Will you read the question and answer?

(The record was read.)

Mr. Ryan: I don't understand the question.

Trial Examiner Moslow: You say you don't?

Mr. Ryan: I don't understand the question.

Trial Examiner Moslow Off the record.

(There was a discussion off the record.)

Trial Examiner Moslow: On the record.

Q. (By Mr. Sargent): Now, in March 27, 1940, you said that there was no change in either party's proposals, that the union wanted a 15 cent increase in wages and the union also wanted one week's vacation with pay. Is that right?

A. That is right. [131]

Q. I ask you whether or not it hasn't been just the last two years when the I.T.U. has, for the first time, become interested in vacations, and whether that wasn't just to take care of the big offices, when there wasn't work, at a seasonal period, to go around?

A. It has only been in the last three or four years that we have been active in requesting vacations with pay. But many of them had been granted before these negotiations started.

Q. And in some of the bigger papers there had been a week's vacation granted?

A. There had been hundreds.

(Testimony of Seth R. Brown.)

Q. Yes. When you couldn't get together in your meeting of April 15, 1940, you, as I recall it, said that you would agree to arbitration. Is that correct?

A. Yes, sir.

Q. At that time did you agree to arbitrate both the question of apprentices, or wages alone?

A. Well, are you familiar with arbitration?

Q. Somewhat.

A. Then, you must know that when the arbitration is agreed on, a code of procedure is set up as to what is going to be arbitrated and what is not arbitrated.

We didn't get that far.

Q. When you spoke to Mr. Hoiles, isn't it true you said: [132] We will negotiate the wages. And that you didn't offer as one of the matters subject to arbitration as to how far the paper could go in regard to apprentices?

A. That wasn't touched on at the time. I simply asked him if he would agree to submit the controversy to arbitration, and he sat there for a minute and was looking up at the ceiling, debating with himself evidently, and he said, "I will have to take a position that the Register will refuse to submit this case to a third party."

Q. I will ask you whether or not that didn't come after the conversation on the question of wages alone?

A. I couldn't say. It was during the conversation on various phases of the matter.

Q. Did you ever offer, I don't think I asked

(Testimony of Seth R. Brown.)

you this point blank before, did you ever offer to arbitrate the differences between you with respect to apprentices?

A. No. We never made that a specific reference. Of course, we couldn't arbitrate certain matters on apprentices. You know that fact. But I did agree to this: To go back to the local union here and recommend that the union submit the case to arbitration and define the arbitratative points.

Q. But when you offered arbitration to Mr. Hoiles in 1940, you didn't give him any hope that he also could have relief on the subject of apprentices?

A. Oh, no; of course not. [133]

Q. Now, then, when in 1941 you had the meeting, about April 18th, when you had the discussion about the increase of wages, didn't Mr. Hoiles say to you at that time: "Whatever increase in wages we grant as a result of this contract, I naturally, will have to pass on also to other employees in the plant"? Didn't he say that in substance?

A. I testified to that here; he did, yes.

Q. I thought the way you testified was a little bit different than that and I wanted to bring out exactly what he had stated.

Did Mr. Hoiles or Mr. Juillard or Mr. Hanna, in 1940, ever, any of them, indicate that by full control of apprentices, which is the language I believe you used and which is also, I believe, used in one of the letters, they meant more than that they wanted more apprentices, and they wanted the apprentices

(Testimony of Seth R. Brown.)

to be on the machines prior to the sixth year?
Isn't that true?

Trial Examiner Moslow: Read the question.

(The question was read.)

The Witness: Well, are you referring to all three of them, Mr. Sargent?

Q. (By Mr. Sargent): I will ask you a preliminary question: Didn't Mr. Hoiles do practically all the talking on the negotiations?

A. Absolutely. [134]

Q. And Mr. Hanna in 1940 was there as more or less as an observer of the management, and the same is true of Mr. Juillard, in 1941?

A. I would say so, yes.

Q. Whenever Mr. Hoiles mentioned this clause of full control of apprentices, during the negotiations, wasn't he referring to the desire of the management to have more than three apprentices; and second, that the apprentices would be permitted by the union to be put on the machines prior to the sixth year? Isn't that true?

A. Do you want my interpretation of what he wanted?

Q. I ask you whether that isn't what he said in the negotiations?

A. No, I wouldn't say he did, specifically.

Q. Weren't there only two subjects discussed in regard to apprentices?

A. Yes. But his actual words, you know, I don't entirely agree with all of that. He expressed a desire to have the apprentices go on the machines

(Testimony of Seth R. Brown.)

previous to their last year, if that is an answer to your question.

Q. And he asked also to have more than three apprentices, didn't he?

A. I have answered that too. I say he wanted unlimited apprentices.

Q. I see. Well, at least the question of the number, and [135] the machines, working on them before the sixth year, were the two subjects in controversy, weren't they? A. Yes, sir.

Q. Now, did the management at any time, other than the slight question that arose as to that early hour of going to work in the morning, ever decline to abide by the contract in effect?

A. I think they had more or less contention out there between the chairman of the chapel and the foreman, but ultimately, after the matter was talked over, they complied with it all, yes.

Q. Isn't it true that this management had a good record of compliance with the so-called verbal agreement throughout its existence?

A. Up to a certain point.

Q. Apart from the negotiations, Mr. Brown, isn't it a fair statement that they did have a good record of compliance with the contract as it existed, apart from the negotiations?

A. I wouldn't want to say that. You are getting into a big subject there.

Q. Well, you yourself said that there was a very friendly relationship between the union and the paper, very cordial relationship between the union

(Testimony of Seth R. Brown.)

and the paper throughout that period, prior to the strike?

A. Not entirely up to the strike, but up to within the last [136] two years previous to the strike, after the suspension of the Journal here, if you want to know specifically.

Trial Examiner Moslow: You say up to the suspension of the Journal?

The Witness: Yes, sir.

Trial Examiner Moslow: What is that Journal?

The Witness: The Journal is their competitor here.

Q. (By Mr. Sargent): When was the Journal suspended, Mr. Brown?

A. Approximately, I think November, or December of 1938.

Q. And after that you say that the relations between the paper and the union were not very good?

A. To this extent: That the editor of the Register criticized the local typographical union very severely in his editorial columns, of the paper, from time to time, and by personal visitations to the composing room.

Q. And you didn't think thereafter 1938, that there were cordial relations between the union and the paper?

A. The union was attempting to abridge any ill feeling between the parties, but they had a difficult task to perform.

Trial Examiner Moslow: Off the record.

(Testimony of Seth R. Brown.)

(There was a discussion off the record.)

Trial Examiner Moslow: On the record.

I have been advised by the custodian of this building that we must be out of here each night by five o'clock, and [137] that we can't begin our hearings until 9:30 in the morning.

Until further notice we will observe those hours.

We will recess at this time until tomorrow morning at 9:30.

(Whereupon at 5:00 o'clock p.m., May 7, 1942, an adjournment was taken until 9:30 o'clock a.m., May 8, 1942.) [138]

Council Chambers, City Hall,
Santa Ana, California,
Friday, May 8, 1942.

9:30 o'clock A. M. [139]

[139]

PROCEEDINGS

Trial Examiner Moslow: The hearing will come to order. Mr. Brown.

SETH R. BROWN,

resumed the stand as a witness for the National Labor Relations Board, having been previously duly sworn, and testified further as follows:

Cross Examination (Continued)

Q. (By Mr. Sargent): So it was your idea, Mr.

(Testimony of Seth R. Brown.)

Brown, that after 1938 the relations between the union and the paper were not cordial?

A. They had become strained to a certain extent.

Q. Did this extend up to the time of the strike?

A. More or less.

Q. I show you a copy of a letter under date of April 3, 1941 to Mr. C. H. Hoiles from the Typographical Union, signed by George W. Duke; the original, which is in my client's possession, will be here shortly. I ask you if you are familiar with that letter?

Mr. Ryan: What is the date of that letter, Mr. Sargent?

Mr. Sargent: April 3, 1941.

The Witness: Yes, sir.

Q. (By Mr. Sargent): You are aware that on April 3, 1941 Mr. Duke, president of the Santa Ana Typographical Union, No. 579, said: "The cordial relations existing between [141] yourself and the union men in your employ should give you great satisfaction in these days when there is so much strife between employers and employees. We trust that this feeling of partnership may continue and be strengthened."

Were you aware of that letter when you said, a minute ago, there were not cordial relations between the union and the paper?

A. Yes, I was aware of it.

Trial Examiner Moslow: May I see the letter?

(Testimony of **Seth R. Brown.**)

Mr. Sargent: When the original is here, Mr. Examiner, I shall put that in evidence.

Q. (By Mr. Sargent): I ask you whether or not you can remember at one of the negotiating meetings at which you were present, a dispute between yourself and Mr. Patison as to what apprentices should or should not be permitted to do.

A. I don't recall any dispute. We had a discussion in reference to it.

Q. At what meeting was that, do you remember?

A. Well, I think it was the April 3rd meeting, 1941.

Q. Will you tell us what you said and what Mr. Patison said?

A. Mr. Patison was the chairman of the office, that is, chairman of the men in the composing room.

Q. The chapel chairman?

A. The chapel chairman, and he made the statement that he [142] wasn't clear upon the provision of the laws as to whether boys could work on a machine previous to the sixth year.

And when he made that statement, I made no reply until Mr. Hoiles spoke up and said: "Well, what do you think about it?"

And I stated positively that the boy couldn't work on a machine until his sixth year.

Q. Didn't Mr. Patison take the position that there was nothing in the law which prevented a man from working on the machine before the sixth year?

A. Mr. Patison stated he might be in error in reference to his position.

(Testimony of Seth R. Brown.)

Q. Didn't he say that definitely?

A. Not to my knowledge. I don't recall he took that position, except he said he was under the impression they didn't prevent him from working on the machine, but he might be mistaken.

Q. He was a member of the negotiating committee on behalf of the union with you, wasn't he?

A. Yes.

Q. I don't think I asked you this yesterday: Is there any other provision in the constitution and by-laws of the I.T.U. which, in your opinion, prevents apprentices from working on machines prior to the sixth year, other than Section 17, that you read yesterday? [143]

A. I don't think there is any other section. There may be, but I am doubtful.

Q. You can't remember the section?

A. I don't recall at this time. I wouldn't say positively until I found the opportunity to look it up.

Q. Just before we closed yesterday you seemed to have some thought in mind that there might have been other things which the respondent did, or some things which the respondent did other than that dispute as the opening hours, which might have been in contravention of the existing verbal contract. Do you recall anything else which the paper did which might be deemed not to be living up to the contract? Prior to the strike, of course.

A. Well, you put your finger on one yesterday: In having a person not a member of a union working on a typesetting machine in the composing room.

(Testimony of Seth R. Brown.)

Q. But the union never objected to that. In fact, it was with the union's consent——

A. I think the union objected but didn't want to make an issue of it.

Q. Do you know of any objection by the union?

A. I have been told that. I don't know personally.

Q. You didn't make any objection, did you?

A. No, sir.

Q. No. Is there anything else which you can point your [144] finger to which, in your opinion, was something which the company had not lived up to, in the existing verbal agreement with the union?

A. There was that section that we referred to about the hours, and the one—one of the apprentices was put on a machine before his fifth year and a protest was made by the union officials, and I think he was taken off.

Q. At the time of that protest with regard to one of the apprentices who went on during his third or fourth year, I ask you whether or not the company didn't take the position, upon being shown your by-laws, that the section 17 merely provided that he should be put on during the sixth year, but there was no prohibition against his being put on before?

A. I couldn't answer that. You would have to ask an official of the local union.

Q. Have you had a chance to refresh your recollection, to know whether or not the company did agree to the change of the hours as the union asked?

(Testimony of Seth R. Brown.)

A. You mean from 6:30 to 7:00?

Q. Yes.

A. I don't think they agreed specifically. As I stated yesterday, Mr. Hoiles indicated that that wouldn't be a difficulty; that the reason for going to work early was no longer available, or necessary.

Q. I ask you whether you have sought to find out, since our [145] hearing yesterday, whether the company did or did not agree to that question.

A. Well, they didn't agree with me, if that's what you mean.

Q. You don't know whether the company agreed or not, do you? A. No, sir, I do not.

Q. All right. You testified that when you held your negotiations in 1940, I believe the last meeting was on May 16th, and that you couldn't agree, and therefore the union held the entire matter in abeyance until some time early in March of 1941—is that right? A. That is right.

Q. And during that time the existing verbal contract was adhered to by the company, was it not?

A. Yes, sir, I think it was.

Q. Had you seen this April 3, 1940 letter, to which I have called your attention a moment ago, prior to the time it was sent out by Mr. Duke to Mr. Hoiles? A. Prior to the time it was sent out?

Q. Yes. A. No, sir.

Q. When did this letter first come to your attention?

A. After it was sent to Mr. Hoiles I saw a copy of it.

(Testimony of Seth R. Brown.)

Q. During the time when you were negotiating on behalf of the union with the respondent, whenever you requested a meeting with Mr. Hoiles he met with you, did he not? [146]

A. Usually so, yes; sometimes they were delayed.

Q. If you happened to ask him for a date when it was difficult for him to meet, he would arrange another date, would he not?

A. Yes, we arranged eventually all of our meetings.

Q. Whether you went to him in negotiations or whether you went to him in private conversation, he was always available to you, even though there might be some slight delay. Isn't that true?

A. I say, we eventually did meet.

Q. Yes. That was true after the strike began as well as before, wasn't it?

A. I never had any personal contact with Mr. Hoiles after the strike except a telephone conversation.

Q. Yes. Did the I.T.U. laws, to which you referred yesterday, in effect April 30, 1941, did they at that time provide that before a strike could be taken it required a three-quarters vote of the membership of the union itself, or a three-quarters vote of the chapel affected? A. The union itself.

Q. In other words, it was possible, was it not, to have a three-quarters majority of the union in favor of a strike even though a number of the em-

(Testimony of Seth R. Brown.)

ployees on the particular paper might be opposed to it? A. Yes; it's a secret vote. [147]

Q. Well, it was true in this case that certain of the employees of the Register were not in favor of bringing this strike? Isn't that so?

A. Speaking for myself, right up to the hour of the strike I tried to arrange a settlement to avoid the strike being held, but I didn't get anywhere with the management in those efforts.

Q. Would you please answer my question, Mr. Brown? A. Will you repeat the question?

Mr. Sargent: I ask the last answer may go out as not responsive.

Trial Examiner Moslow: Motion granted.

Mr. Sargent: Read the question.

(The question was read.)

The Witness: I haven't any knowledge.

Mr. Ryan: I object to the line of questioning as immaterial and irrelevant and has no bearing on the issues in this case.

Trial Examiner Moslow: I will overrule the objection.

The Witness: I haven't any knowledge as to the feelings of any individual who voted on that strike sanction. I don't know to my personal knowledge how any man voted.

Q. (By Mr. Sargent): You know certain people didn't go out, do you not?

A. Yes, but I don't know how they voted. [148]

Q. You know that certain people went out and came back? A. I know one came back, yes.

(Testimony of Seth R. Brown.)

Q. And you know others wanted to come back, but the union persuaded them not to come back?

Mr. Ryan: I object——

Trial Examiner Moslow: Why is that relevant, Mr. Sargent?

Mr. Sargent: Because it indicates what the thought of a number of the employees was as to whether the company had been bargained with in good faith, and whether the union was justified in its action.

Trial Examiner Moslow: How do you derive that from the fact of whether an employee wants to go back to work or not?

Mr. Sargent: As you read the complaint, Mr. Examiner, you will find one of the charges, and the witness has already referred to it, was that there was no reinstatement. We propose to show that statement is not in itself unqualifiedly correct.

Trial Examiner Moslow: I will sustain the last objection.

Q. (By Mr. Sargent): It was possible, therefore, was it not, under the by-laws, for a strike vote to be taken where there was more than 25 per cent of the employees in the shop who had been unwilling to have the strike called?

A. I don't understand your question.

Mr. Ryan: I object to this——

Trial Examiner Moslow: I will sustain this; it is [149] repetitious. He has answered before.

Mr. Sargent: He hasn't answered that.

Trial Examiner Moslow: He has answered that

(Testimony of Seth R. Brown.)

a three-quarter vote refers to the entire vote, and not to the chapel.

Mr. Sargent: But one is a logical deduction from the other. But unless you have some particular objections, I would like to have the record show it was possible to have a strike vote where more than a quarter or possibly the majority of employees in question were opposed to the strike.

Trial Examiner Moslow: It seems to be pure mathematics to me. However, I will let you ask the question.

Mr. Sargent: Will you read that question, please?

(The question was read.)

The Witness: I don't know how many members of the union there were at that time.

Trial Examiner Moslow: Mr. Brown, is it mathematically possible for that situation to occur?

The Witness: I couldn't answer that. I don't know how many members would be affected on the outside of the office.

Q. (By Mr. Sargent): Approximately how many members of the union were there at the time of the strike?

A. I couldn't answer that question. You would have to ask——

Q. You had a lot of employees in other places?

A. We had some, yes, but the majority of them were in the Register. [150]

Trial Examiner Moslow: The majority of the local members belong to this chapel?

(Testimony of Seth R. Brown.)

The Witness: Yes, sir.

Q. (By Mr. Sargent): Approximately how many print shops had members in the jurisdiction of this local?

A. I couldn't give you the exact number. We have an official of the union that can give you all that information.

Trial Examiner Moslow: Are you going to call a representative of the union, Mr. Ryan?

Mr. Ryan: Yes, I am; the next witness.

Mr. Sargent: I would like to call the Examiner's attention to this fact: That he is a man that has spoken with all the authority of the union; who has been here over a period of months and who is supposed to know the whole situation. And whenever I ask an embarrassing question he says we will have to ask someone else, or "I don't know."

If he spoke with the authority which he pretended to have with respect to other subjects, it is rather strange that when I have a question which is embarrassing, he doesn't care to answer it.

The Witness: May I make a statement on it?

Trial Examiner Moslow: I do not consider counsel's statement as evidentiary, so I don't care to hear your reply.

Q. (By Mr. Sargent): Do you know, Mr. Brown, of certain employees who were returned to work after the strike? [151]

A. I know there was one journeyman returned to work a few days after the strike, yes.

Q. What is his name?

A. Carl Thrasher.

(Testimony of Seth R. Brown.)

Trial Examiner Moslow: How do you spell that?

The Witness: T-h-r-a-s-h-e-r.

Trial Examiner Moslow: Is there a higher rank than journeyman in this profession?

The Witness: No, they are all journeymen.

Q. (By Mr. Sargent): Do you know of anyone else, Mr. Brown, who was returned to work?

A. One of the apprentices went back after several weeks. I don't just know the name.

Q. Do you know his name?

A. I think it was Cecil Starnes, I believe.

Q. You said yesterday in answer to a question from Mr. Ryan, that the strike had been continuous ever since April 30, 1941. Did you mean that?

A. April 30, 1941?

Q. Yes. A. Yes.

Q. You said that a picket line had been maintained around the plant ever since that time. Did you mean that statement too?

A. So far as my knowledge goes, yes, sir. [152]

Q. Don't you know that there have been weeks and months when there hasn't been a picket outside the building on either side of the street?

A. No, sir; not to my knowledge.

Q. You have been told that?

A. No, sir. I have been down there several times. Every time I have visited there has been pickets there. I haven't supervised the whole procedure.

Q. Maybe they came out just to greet you.

A. Well, I am satisfied—at least they were all present when I came down there.

(Testimony of Seth R. Brown.)

Q. I see. Did you on behalf of the union, or did the union, to your knowledge, ever request the reinstatement of the striking employees at any other time than the letter which is now in evidence asking for a meeting? A. No, sir.

Trial Examiner Moslow: That is the letter received around July 29th, 1941?

The Witness: I think that is about the date; it's in July.

Q. (By Mr. Sargent): You were referring to the letter marked Board's Exhibit 7, which is in evidence, signed by Mr. Jones, president of the union, by Mr. Fisher, secretary, saying "The union requests a meeting with the Santa Ana Register Publishing Company for the purpose of renewing [153] negotiations and reaching an agreement for the reinstatement of the former union employees of The Santa Ana Daily Register." That is the letter referred to? A. Yes.

Q. And that is the only request, as far as you know, ever made for any reinstatement of employees? A. So far as I know.

Q. And you were also familiar, were you not, with Board's Exhibit 8 now in evidence, of the answer under date of August 2, 1941, by the Register Publishing Company to the union?

A. I saw a copy afterwards, a copy of this.

Q. And you wouldn't say from this letter that the company refused to confer with the union, would you?

(Testimony of Seth R. Brown.)

A. They didn't refuse to confer, no. They set forth their position as not changed.

Q. Well, the position of the management, you say, had not changed. That isn't what the letter says, with respect to the necessity of having added new employees; you don't mean to say there was no change there, do you?

A. This is what I refer to: "On behalf of the management I also feel it necessary to indicate to you that there has been no change in our situation since the union and the management found it impossible to get together on the questions of increased wages and apprentices."

That is what I referred to. [154]

Q. On the question of reinstatement you weren't attempting to indicate the management's position hadn't changed, so far as reinstatement of employees was concerned?

A. No, it was on the question of apprentices, which broke off negotiations.

Q. Did you know, Mr. Brown, that prior to the employment by the company of certain of the people who were employed after the strike, that the company sought to get back some of its former employees, before employing others? Did you know that?

A. Not to my knowledge. I haven't any knowledge of it.

Q. Had you been told that the company had asked one of its leaders, Mr. Duke, that they would be very glad to take back anybody who wanted to

(Testimony of Seth R. Brown.)

come back, that there was a necessity for having more employees and if they didn't come back, it would be necessary to replace them with others?

A. I heard general discussion, hearsay; I never was told that specifically.

Q. Mr. Duke never told you that?

A. No, sir.

Q. All you heard of it was a rumor. Is that right?

A. I heard it around, yes. I don't know when it occurred, or the details.

Q. You never suggested to the union that from the viewpoint of mutual advantage to both the employees, the union, and the [155] company, that there be an effort to see if those employees couldn't be gotten back to work before other employees were employed?

A. It isn't the policy of the Typographical Union——

Q. May I have an answer to the question?

A. I am trying to answer it.

Trial Examiner Moslow: Proceed.

The Witness: It isn't the policy of the Typographical Union to permit their members to go back individually, in a case of a strike of this character, and that is, as I understand it, what was proposed by Mr. Hoiles; informally, you understand.

Trial Examiner Moslow: What was proposed?

The Witness: That certain members that went out on strike would apply for their old jobs back.

(Testimony of Seth R. Brown.)

Q. (By Mr. Sargent): You don't know whether it was Mr. Hoiles or a representative of the management who told Mr. Duke about bringing them back generally, or whether it was just individually?

A. No, I don't; just as I told you, I got my information in general conversation in reference to it.

Q. Now, I come back to my original question. Did you, as the ranking member of the International Union, at any time make any move on behalf of the union and the striking employees to bring them together with the management for the [156] purpose of getting them back in their jobs prior to the letter of July 28th or 29th?

A. Well, we suggested arbitration.

Q. Wait a minute. I am talking now about the time between the date of the strike and the date of your letter, on July 28th or 29th.

A. That's what I refer to.

Q. Did you make any move to the management saying: Let's see if we can't bring these employees back into the plant?

A. I suggested this action by the union on July 29th.

Q. That's the only move which you suggested.

A. That's the last move, yes, outside of arbitration.

Trial Examiner Moslow: When you say you suggested the action of July 29th, you refer to the letter, Board's Exhibit 7?

The Witness: Yes, sir.

(Testimony of Seth R. Brown.)

Q. (By Mr. Sargent): I thought you said a moment ago you didn't know about the letter until after it was sent?

A. Not that letter. I am referring to the one in reference to—I refer to the letter where the union asked for the reinstatement of the members. This letter that was sent by Mr. Duke I hadn't any knowledge of.

Q. I see. Have you had occasion over the evening recess to ascertain whether or not Jane Hoiles' work on the machines was used as a part of the production of the paper? [157]

A. I am told that it was.

Trial Examiner Moslow: Is that the girl you say worked on the machine?

The Witness: Yes, sir.

Trial Examiner Moslow: These machines you refer to, are they linotype machines?

The Witness: Yes, sir; linotype, and I don't know whether they have an intertype or not; one is an intertype and the rest of them are linotypes.

Q. (By Mr. Sargent): Did you ever present, during the negotiations of 1940 or the negotiations of 1941, prior to the strike, a written contract to Mr. Hoiles?

A. I never did; the union, I think, originated it. They may have sent it, and I believe they did, which called forth a counter-proposition; but I never presented any agreement. I was brought in afterwards.

(Testimony of Seth R. Brown.)

Q. Was anything presented by the union to Mr. Hoiles in your presence during either 1940 or 1941?

A. No, not in my presence.

Q. On the night of the strike, on April 30, 1941, do you remember what notice was given to the management of the strike? The vote that had been taken?

A. The action of the local union was that the strike, if a scale was not agreed to by the management, that the strike would occur at 7:00 o'clock on the next morning, May 1st. [158]

Q. And at the same time was not the statement made to the management that the night shift would not come off?

A. The regular night shift, yes.

Trial Examiner Moslow: Would it what?

Mr. Sargent: Would not go off on strike.

Q. (By Mr. Sargent): And that notice was given around 9:00 o'clock in the evening, was it?

A. I don't know what time it was, but that referred to the regular shift.

Q. And I ask you whether or not it isn't true that shortly after that the night shift did walk off?

Trial Examiner Moslow: Shortly after what?

Mr. Sargent: The night shift did walk off on that strike.

Trial Examiner Moslow: During this evening?

Mr. Sargent: This evening of April 30th.

The Witness: I can recite exactly what happened, if that is what you want.

Q. (By Mr. Sargent): Didn't the night shift go off that evening?

(Testimony of Seth R. Brown.)

A. After certain events happened, yes.

Q. Well, I have no desire to keep you from telling the situation. If you want to tell what happened, go ahead. It is all right, Mr. Brown.

A. Well, the president of the union, Mr. Duke, came up to my hotel. I don't know what time it was. I imagine it was [159] about 11:00 o'clock. It might have been half past ten; and he stated that the foreman of the composing room was calling up all the printers in town, getting them down there to work extra, in order to get the paper out for the next day, and he didn't think it was fair, inasmuch as the union had agreed that the regular shift would stay on until 7:00 o'clock in the morning; and he wanted by advice, and I instructed him to pull the men out, under those condition.

Q. When Mr. Duke had gone to Mr. Hoiles and said there was going to be a strike the following morning, but that the night shift would not walk out, he didn't make any condition to the fact that the night shift would stay on the job——

Trial Examiner Moslow: What is the relevancy of all this, Mr. Sargent?

Mr. Sargent: It is showing the picture, and exactly what happened.

Trial Examiner Moslow: Why is it relevant to any of the issues? These people had a right to go out without notice, if they wished.

Mr. Sargent: You are dealing here, Mr. Examiner, with a case which involves the good faith or the bad faith of both parties to this situation.

(Testimony of Seth R. Brown.)

Now, the union and the Board are treating as other than good faith certain actions of the management, and, therefore, in order to put you in a position to know the whole facts, [160] each of the facts, I am trying to make the pertinent facts apparent before you.

Now, this is treated by the union as an act in bad faith of the management; and I would like to indicate to you that there was no condition at all mentioned by the union at the time when the management was notified there was going to be a strike. The union made no mention at all of any condition that nobody else should be brought in to work in the place.

Trial Examiner Moslow: Continue.

Q. (By Mr. Sargent): Isn't it true, Mr. Brown, that Mr. Duke made no condition to the management that if the night shift would stay on that the management couldn't bring anybody else into the plant?

A. I don't know what his conversation was.

Q. You didn't instruct him to make any such——

A. I didn't discuss it before.

Q. And the men who were brought in were members of your union, were they not?

A. Yes; some of them had worked the day shift.

Q. But they were all on your lists of approved members, so that they were simply bringing in people as though they were for extra work. Isn't that true?

A. They were members of the union.

(Testimony of Seth R. Brown.)

Q. Do you know how many men were actually hired that night [161] by the paper as extra men?

A. No, I do not.

Q. Would you be surprised to learn there were two? A. I don't know that that is true.

Q. You said in your testimony, did you not, they hired all the extra printers in town?

A. They called them up. I don't know; maybe they didn't respond. I can imagine they wouldn't, under the circumstances.

Q. Well, you don't know whether it was two, or more, or less, do you? A. No, sir.

Q. Mr. Brown, if the company had met the demand of the union for increased wages in April of 1941, would there have been a strike?

A. I don't see any occasion for a strike, if they met the union conditions. We don't strike when we agree on union conditions.

Q. My question was: Had there been the granting of the increased wages by the management in April of 1941, would there have been a strike?

A. That's up to the organization, of course. But I see no occasion for a strike, if we could agree upon the wage question, and the other matters involved.

Q. In other words, the main question between the union and the company was the question of the scales. Is that right? [162]

A. Yes, up until the receipt of the communication in reference to complete control over apprentices.

(Testimony of Seth R. Brown.)

Q. In spite of the letter with respect to control over apprentices, the company did nothing with respect to apprentices other than to hold to its agreement with the union, prior to that time. Isn't that true?

A. Yes.

Mr. Ryan: May I have the last question read?

(The question was read.)

Mr. Ryan: I object to the question. The evidence in the record is to the contrary.

Mr. Sargent: Oh, yes——

Trial Examiner Moslow: Just don't argue. The objection is overruled. When you say lived up to the agreement, you mean the oral agreement?

The Witness: The oral agreement, yes.

Trial Examiner Moslow: Off the record.

(There was a discussion off the record.)

Trial Examiner Moslow: On the record. Proceed.

Q. (By Mr. Sargent): In the event that some local makes a contract with an employer which is not entirely pursuant to the I.T.U. rules and regulations, as set down in its by-laws, the I.T.U. doesn't take away the charter of the local, does it?

A. It depends on how serious the offense is.

[163]

Q. Do you know of any occasion where it has jerked a charter, simply because the contract wasn't acceptable to the I.T.U.?

A. I know I can recall one charter that was lifted, in the city of St. Louis, years ago.

(Testimony of Seth R. Brown.)

Q. And there were some other circumstances in that St. Louis Charter, apart from the contract, weren't there? A. Sure.

Q. Yes. As a matter of fact, all that happens is that the I.T.U. sends back word that the contract cannot be approved, by it, and that the I.T.U. won't give protection either to the union or security to the employer for its enforcement. Isn't that true?

A. That is true to a certain extent, yes.

Q. So that there isn't the great, dire effect, which your testimony might have indicated yesterday, when a local makes a contract which is a little beyond the wishes of the International?

Mr. Ryan: I object to that. It implies that the question of apprentices was a little matter that the I.T.U. could have easily overlooked, and that isn't necessarily the fact, and our contention is to the contrary.

Trial Examiner Moslow: Read the question.

(The question was read.)

Trial Examiner Moslow: I will sustain the objection. [164]

Q. (By Mr. Sargent): Do the rules of the I.T.U. require the resetting of all type that the employer uses, in mat or plate form?

A. The reset proposition varies in different communities. Local advertising has to be reset.

Trial Examiner Moslow: Will you explain what you mean by that?

(Testimony of Seth R. Brown.)

The Witness: I mean any firm that's in a local field, the type of local advertising has to be reset within a certain number of days, which is usually incorporated in a contract.

Q. (By Trial Examiner Moslow): You mean if a local advertiser has his own mat or cut it has to be reset?

A. If he secures that mat from our newspaper or printing institution, it has to be reset within a certain number of days on record.

Q. What do you mean by reset?

A. Set up from the original; they get it in mat form, and that has to be reproduced as nearly like the original as possible, in the office.

Q. Which is the printing made from? The mat or the reset? A. It is made from the mat.

Q. What is the purpose of resetting?

A. That's a provision.

Q. That's a penalty for using mats? [165]

A. That is right, because of the fact that there might be a permanent headquarters set up where all advertising was set.

Q. It is a device to keep, or make work for the apprentices?

A. It's to make work. Naturally, they want to keep what they have got.

Q. (By Mr. Sargent): I wonder if you know of your own knowledge, Mr. Brown, whether there are ten commercial printing shops in Santa Ana? I am informed that is the number that are here. Does that bear out your information?

(Testimony of Seth R. Brown.)

A. I don't know. I couldn't say positively.

Q. Did you have anything to do with the negotiations leading to the new commercial plant contract?

A. None whatever.

Q. The contract of 1941?

A. No, sir.

Q. That didn't come under your supervision at all?

A. No, sir. I was not asked to come in.

Q. When a continued story is furnished in mat form to a paper, do the I.T.U. rules require that that be reset?

Trial Examiner Moslow: What is the relevancy of this, Mr. Sargent?

Mr. Sargent: Well, because—might I give you that after I get an answer, subject to its being stricken if it isn't applicable?

Trial Examiner Moslow: What difference does it make? [166] Suppose the answer is "yes". What difference does it make?

Mr. Sargent: I would like not to give the reason until I get the answer. Then I would be very happy to. You can strike if it isn't material.

Trial Examiner Moslow: Very well; you may answer, then I will decide whether it should be stricken or not.

The Witness: I don't know what the local contract provided for in reference to reproduction. You would have to produce the contract.

Q. (By Mr. Sargent): I asked you about the I.T. rules.

A. Well, you would have to get the contract

(Testimony of Seth R. Brown.)

itself, because there are too many variations in different contracts, as you well know, Mr. Sargent.

Q. What? A. You know that.

Q. Yes, I do, and that is why I am asking this question. The I.T. rules say they have to be reset?

A. Yes.

Q. But the local contracts frequently don't require them to be reset; isn't that true?

A. Certain national advertising and matters of that kind are eliminated, so far as reset is concerned, in a great number of contracts.

Q. I am talking about continued stories.

A. It may be, but the majority of them are reset. [167]

Q. Isn't it true, so far as you know, the union didn't require the Register to reset these continued stories? A. I am not familiar with it.

Trial Examiner Moslow: What do you mean by continued stories, Mr. Brown?

The Witness: I believe he means a serial story.

Trial Examiner Moslow: It is furnished in mat form?

The Witness: Yes, it is furnished in mat form. No, it may not be in mat form, no. It may be in copy. But it would be in mat form if it wasn't reproduced.

Q. (By Mr. Sargent) You are aware, are you not, that in many of the local contracts, in spite of the I.T.U. rules to the contrary, the local contracts do you not require the resetting of type by the publisher? Isn't that true?

(Testimony of Seth R. Brown.)

A. In isolated cases that may—the local union may enter into a contract that is in violation of the international law; but you, yourself, have expressed what the position of the International is, and when the contract is up for reconsideration those are questions that will have to be considered.

Q. And if this paper had entered into a contract with the local which the International didn't like because there was something as to the number of apprentices, or as to the apprentices being permitted to do certain things the I.T.U. didn't like, the only difficulty that occurred would have been that the I. T. U. wouldn't have approved the contract, [168] and wouldn't have enforced it against either the union or the party. Isn't that true?

A. No. I don't think that would be their action. I think the International would inquire why the provisions of the contract as originally submitted to the president of the International were not adhered to; because these contracts are all submitted to the International before they are submitted to the local paper.

Q. You said yesterday that on many occasions they were signed by the local before they were sent to the International.

A. You mean the settlement?

Q. Yes. In other words, the contract is often signed before it is sent on to the International?

A. No. You misinterpreted my position on it. Here's the setup on it. When a local union adopts a new scale that scale is submitted to the president

(Testimony of Seth R. Brown.)

of the international union to see if it complies with international law, but previously to it being submitted to the local publisher. And if the president of the International finds that it does comply with international law, he so states. If it does not, he points out in what manner it does not comply and requests the local union to make the necessary changes before it is submitted to the publisher.

Q. Well, you testified that there were many changes from the international laws in local contracts, and that in certain [169] cases the International didn't like the contract which the local and the publisher entered into. Isn't that true?

A. Yes, sir.

Q. And if this paper and your local here had entered into an agreement which provided for certain provisions as to the apprentices, which the International did not like, the contract would have stood, but the International would have expressed its disapproval of the terms?

A. I still maintain they might take stronger action than that with a local union that would be guilty of entering into a contract that would give complete control over the apprenticeship system.

Q. You have already testified they entered into two things with respect to apprentices, where the numbers were involved, and the question of being on the linotype machines before the sixth year, and I think you know that the paper had two less than the number of apprentices to which it was entitled already, under international law?

(Testimony of Seth R. Brown.)

A. I wouldn't agree with that.

Q. You said yesterday they had three by private agreement; whereas, they are entitled to five under international by-laws.

A. You made that statement. I don't think they were entitled to five.

Q. You said possibly five. Are you going to say now on the stand that the question of whether or not the apprentices [170] could go on the linotype machines before the sixth year was of such importance to the I.T.U. that it would have thrown out the contract, if it came before it?

A. I can't speak for the president of the International Typographical Union, what his action would be.

Q. There have been a great many more drastic changes than that, that have been approved by the International Union. Isn't that true?

Mr. Ryan: I object to the question——

Trial Examiner Moslow: I will sustain it. We will not go into collateral issues here.

Mr. Sargent: Remember, Mr. Examiner, this gentleman is an expert.

The Witness: You don't seem to think so.

Trial Examiner Moslow: We will not go into other local situations, and other variations. We have enough to do with this one. We can't go into collateral issues here.

Mr. Sargent: This was one of a series of negotiations that broke down because of two questions. I am asking the precise question with regard to one

(Testimony of Seth R. Brown.)

of the two things where they didn't get together, and this witness is attempting to indicate, by testimony yesterday that this was such a serious matter that it would have flagrantly offended the I. T. U., and jeopardized this local, if one small variation were made. Yet, many instances could be shown of far greater [171] changes than this, where the International approved a contract and took no recalcitratory action against the local.

Trial Examiner Moslow: My ruling will stand.

Mr. Ryan: Mr. Examiner, referring to the last statement of respondent's counsel, he said the negotiations broke down because of two differences between the union and the company——

Trial Examiner Moslow: Let me interrupt you. I don't take the statements of counsel as evidence of the facts at all.

Mr. Ryan: I am sure you wouldn't, but I am not so sure somebody else, reading the record, might not do so, and I wanted to protect myself.

Trial Examiner Moslow: Let us not have any further comment, Mr. Sargent. Let us proceed.

Mr. Sargent: May I make one remark: I don't like to have counsel state I am deliberately stating anything false with regard to the record.

Trial Examiner Moslow: No one charged you with that, sir. Let us proceed.

Q. (By Mr. Sargent) Mr. Brown, at the time when the management made a counter-proposal to which you have already testified, of a raise in gross pay of \$2.50 a week, in return for which the printers would work two and one-half hours more per week,

(Testimony of Seth R. Brown.)

which is contained in the management's proposal, written proposal, in its letter of April 26th, Board's Exhibit [172] 5 in evidence, you stated that that had already been mentioned by Mr. Hoiles previously in a negotiation. What was the date at which that was discussed, if you can recall?

A. I think April 3, 1941.

Q. Now, at that time when you were having your discussion with Mr. Hoiles, did he tell you the reason for that proposal by the management?

A. No. He didn't want to raise the hourly wage.

Q. Did he say to you this, in substance, upon this negotiational conference: One, that national advertising was down, and that the question of revenue to meet increased wages was a difficult one for the management, but that if the printers would work two and one-half hours more per week, that they would receive an increase of \$2.50 and the paper would receive certain additional work which would enable it operate more economically, and would somewhat make up to it for the increase in salary, did he say that?

A. I don't recall any such conversation.

Q. He didn't say anything like that?

A. I wouldn't say that he didn't; I don't recall it.

Q. I ask you whether he didn't say that if the employees worked two and one-half hours more, the management would receive something substantial in return for the increase in wages?

(Testimony of Seth R. Brown.)

A. No, I don't think any such statement was made. [173]

Q. Do you know at the time, that national advertising was dropping in this and other papers?

A. National advertising?

Mr. Ryan: I object to it. It assumes it was. It assumes a fact not in evidence.

Trial Examiner Moslow: I will sustain the objection.

Q. (By Mr. Sargent) Was there any discussion during any of these negotiations in 1941 about a drop in national advertising?

A. Oh, I think it was mentioned during the negotiations somewhere. I don't just recall.

Q. Didn't Mr. Hoiles tell you that there had been a material drop in national advertising with this paper, preceding the negotiations in 1941?

A. I think that question was in 1940, if I remember.

Q. Might it not have been in 1941?

A. Well, my remembrance is it was in 1940.

Q. Did Mr. Hoiles say to you in 1941 during one of the conferences, that the revenues of the paper were such that he didn't know where the additional funds would come from to pay increases in salary?

A. I believe he did make a statement along that line at one time, which called forth the suggestion on our part of what to do.

Q. Did you or Mr. Duke during the conferences of April 3rd, [174] say why you didn't want the

(Testimony of Seth R. Brown.)

employees in respondent's composing room to work the two and one-half hours more a week?

A. Well, I don't know exactly what we said! I know what our position is now, and what it evidently was at that time.

Q. I am asking you what either you or Mr. Duke or anybody representing the union said at that time.

A. We were opposed to lengthening of the hours and so recommended to the union. We took the matter back to the union. The union decided unanimously it was opposed to the lengthening of hours.

Q. Was that action taken on your recommendation?

A. We recommended that they not accept it.

Q. You also recommended it not be accepted?

A. Yes, sir.

Q. You are aware that in a great many similar contracts or agreements between locals and the I.T.U., and similar newspapers, that 40 hours is the number of hours worked per week in the composing room of those papers, are you not?

A. A great many of them have worked 40 hours, yes.

Mr. Sargent: That is all.

Trial Examiner Moslow: Mr. Sargent, you were going to introduce the letter of April 3rd.

Mr. Sargent: I am going to, but I thought I would ask Mr. Duke, in view of the fact he is to come on next. It was signed by Mr. Duke. [175]

Mr. Ryan: I will stipulate it was, and you may introduce it.

(Testimony of Seth R. Brown.)

Trial Examiner Moslow: I would like to have it in now.

Mr. Sargent: I will now offer it to be marked for identification as Respondent's Exhibit No. 1.

(Thereupon the document referred to was marked as Respondent's Exhibit No. 1, for identification.)

Trial Examiner Moslow: There being no objection, Respondent's Exhibit 1 for identification will be received.

(Thereupon the document heretofore marked as Respondent's Exhibit No. 1 for identification, was received in evidence.)

RESPONDENT'S EXHIBIT No. 1

Member of
Southern California Typographical Conference
SANTA ANA TYPOGRAPHICAL UNION
Number 579

Santa Ana, California
(Union Label 2)
April 3, 1941

Mr. C. H. Hoiles
Santa Ana Register
Santa Ana, California

Dear Sir:

The Santa Ana Typographical Union wishes to enter into a contract with you for the period beginning May 1, 1941 and ending April 30, 1942, the

(Testimony of Seth R. Brown.)

Union to furnish all labor performed in the composing room of The Register.

As a result of advancing prices in all commodities because of the defense effort and the outlook for additional business in the city of Santa Ana, there is a need for an increase in the price per hour paid for journeymen printers in your employeee.

As you doubtless already know, the Union has recently completed negotiations with the commercial shops in Santa Ana and southern Orange County for a new contract calling for a substantial increase in wages.

In our negotiations last year, no agreement was reached with you, and the scale of wages question was left "open" for further consideration at a later time. You will recall at that time our request was for one dollar and fifteen cents (\$1.15) per hour, plus a two weeks' vacation with pay.

Now, more than ever before, there is need for the adjustment of wages, since your printers are now drawing less than other printers employed in the city.

We beg you to earnestly consider this matter and give it your favorable attention at our conference scheduled for Friday, April 4, at 2:45 p. m.

The cordial relations existing between yourself and the union men in your employ should give you great satisfaction in these days when there is so much strife between employers and employees. We

(Testimony of Seth R. Brown.)

trust that this feeling of partnership may continue and be *strengthened*.

SANTA ANA TYPOGRAPHI-
CAL UNION NO. 579
GEORGE W. DUKE
President

cc/ret

Live each day so that you can look any man in the eye and say: "I buy under the union, label shop card and button!"

Trial Examiner Moslow: I asked you yesterday if you had a copy of the oral contract. Have you got that yet?

Mr. Sargent: We have been unable to find that and my client is trying to do that. It certainly will be here tomorrow and we will be in a position to say whether that is or is not a typical contract.

Trial Examiner Moslow: Off the record.

(There was a discussion off the record.)

Trial Examiner Moslow: On the record. Proceed.

Redirect Examination

By Mr. Ryan:

Q. Mr. Brown, when the union voted to strike you took no part in bringing any word to the company about that matter, did you?

(Testimony of Seth R. Brown.)

A. No, sir. [176]

Q. That was Mr. Duke who did that?

A. Yes, sir.

Q. You weren't with Mr. Duke, were you?

A. No, sir.

Mr. Ryan: I have no further questions.

Trial Examiner Moslow: Mr. Sargent?

(No response.)

Trial Examiner Moslow: Under this agreement, your oral contract, were the printers forbidden to work more than 37½ hours a week, or were they paid time and a half for overtime?

The Witness: They were paid time and a half for overtime.

Q. (By Trial Examiner Moslow) They were allowed to work as many hours as they wanted to?

A. Yes, sir.

Q. You often used the expression that the president of the I.T.U. underwrote the contract. What do you mean by that?

A. I mean that after the local parties, the company and the local union, agreed on a contract, the contract is sent to the president of the international, and he looks it over, and if it is in accord with international law, he underwrites it.

Q. What do you mean by underwrites?

A. He attaches his signature to it guaranteeing its fulfill- [177] ment.

Q. He guarantees to the employer the fulfillment of the contract? A. Yes, sir.

(Testimony of Seth R. Brown.)

Q. And is the underwriting of any value to the union itself?

A. Well, most of us think so. There is a difference of opinion on that sometimes. It is generally construed as being the proper procedure.

Q. Is the I.T.U. affiliated with the A. F. of L. now? A. Not at the present time.

Q. It is unaffiliated? A. Unaffiliated.

Q. This oral agreement that has been referred to, did you have anything to do with the negotiation of it? A. No, sir.

Q. Do you know what its term was?

A. The length?

Q. Yes.

A. It ran from March '37 to March of '39.

Q. Was it automatically renewed or re-negotiated?

A. I understand after slight negotiations it was renewed, or continued for a year.

Q. It was re-negotiated or automatically renewed?

A. I guess they didn't come to an agreement on the terms and finally it was allowed to continue. [178]

Q. For one year? A. For one year, yes.

Q. That would be until about March 1940?

A. Yes, sir.

Q. What happened at that time?

A. Well, they adopted a new scale.

Q. Was it renewed? A. It never was.

(Testimony of Seth R. Brown.)

Mr. Sargent: Was the answer to that, the contract was never renewed?

Trial Examiner Moslow: That is right.

Q. (By Trial Examiner Moslow) And in 1941 was it renewed?

A. '41? That was the date of the strike. They adopted a new scale, another new scale, in September '41.

Q. It is your position that the contract was not renewed in March, 1940, but that the employer and the union followed the same terms?

A. Yes. Mr. Examiner, yesterday I think I made the statement that it was continuous. It continued up to the time of the strike. I find, by looking at the contract last night, that it only continued for 60 days after the expiration of the agreement, so that under those provisions, it had expired, although it was mutually acceptable to both sides.

Q. You mean the actual working conditions remained the same? A. Yes, sir. [179]

Q. Even though the contract expired?

A. Yes, sir.

Q. Did this contract have a closed shop provision?

A. I think it has a provision in there that none but members of the union would be employed.

Q. Was that provision lived up to after March, 1940? Were any non-union members employed?

A. None, except this isolated case, which they spoke of, this young lady working in there. That is so far as my knowledge goes.

(Testimony of Seth R. Brown.)

Q. About how many employees were there in the composing room?

A. Twenty-two, I believe.

Q. How long has the apprenticeship system been in existence in the I.T.U. union?

A. It has been in existence since 1907. It was not until 1924 that the International Typographical Union established the board of education at its headquarters in Indianapolis, and adopted certain units to be furnished to any schools who would adopt the set of regulations. There was six units, with ten lessons in each unit.

Q. Do you know approximately, you say there were 1,000 locals of the I.T.U.?

A. About a thousand, yes.

Q. Do you know of any contract where the locals placed no restriction on the number of apprentices, or the kind of work [180] they did?

A. No, sir. I don't know of any such contract, of my own knowledge.

Mr. Sargent: Mr. Examiner, may I object to your question as not being based upon what the record shows in the case?

Trial Examiner Moslow: Yes. You have a perfect right to object, and I will consider your objections just as though the question were being asked by anyone else. But I would like to get the grounds of your objection. I asked whether he knew of any contracts.

Mr. Sargent: You asked whether he knew of any contract where there was no restrictions upon the

(Testimony of Seth R. Brown.)

number of apprentices. The reason for my objection is because that assumes that the position of the management was at all times that we would have unlimited——

Trial Examiner Moslow: There is no such assumption on my part.

Mr. Sargent: Very well. I will withdraw my objection.

Q. (By Trial Examiner Moslow): You mentioned something about conciliation during this strike. Will you tell me something more about that?

A. Well, these meetings we have held, I don't know how many there are, but in the aggregate, all these meetings were conciliation meetings.

Q. After the strike? [181]

A. Oh, you mean subsequent to the strike. No, there was no meetings held except through official communication.

Q. You testified you spoke to Mr. Hoiles over the telephone in May, 1941, and you referred to a Conciliator in the Department of Labor?

A. Yes, sir.

Q. Had there been meetings after the strike with a Conciliator? A. Not mutual meetings.

Q. Separate meetings?

A. The union had requested the Director of the Conciliation Division of the Department of Labor to assign a Commissioner to investigate the circumstances of the controversy here.

Q. Was a Conciliator assigned?

(Testimony of Seth R. Brown.)

A. Yes, sir.

Q. What is his name?

A. Mr. E. H. Fitzgerald, of the Los Angeles office.

Q. You never met with the management and Mr. Fitzgerald?

A. Not together.

Q. But you did meet with Mr. Fitzgerald?

A. Yes, sir.

Q. You testified that the Conciliator proposed that both sides submit the matter to arbitrators and the union agreed, and that the Conciliator asked Mr. Hoiles to do likewise. How do you know that?

[182]

A. He informed me of that.

Q. After you had this conversation with Mr. Hoiles on the telephone, you said it was your position or your contention that he was refusing to arbitrate. Did you hear from Mr. Hoiles thereafter on that question?

A. No, sir.

Mr. Sargent: Mr. Examiner, do I understand that you are assuming that his testimony was that Mr. Hoiles refused to negotiate?

Trial Examiner Moslow: No, that's what he testified. That he told Mr. Hoiles; that Mr. Hoiles was refusing to arbitrate.

Mr. Sargent: I thought you said "negotiate". Arbitrate. Excuse me.

Q. (By Trial Examiner Moslow) Was this so-called sixth year rule included in the oral contract?

A. Yes, sir.

(Testimony of Seth R. Brown.)

Mr. Sargent: What was the last part of that question, please?

Trial Examiner Moslow: Included in the oral contract.

Q. (By Trial Examiner Moslow) Had it been included ever since you first started your oral contract? A. So far as my knowledge goes.

Q. Did Mr. Hoiles ever explain to you how he wanted to modify or change or re-negotiate these apprenticeship rules? [183]

A. He wanted to put apprentices on the machines.

Q. Did he ever tell you why?

A. He thought we were exploiting the apprentices and making them serve too long a time in different departments, and he thought they ought to be put on the machines whenever he wanted them on there, without getting the rudiments of the trade first.

Q. What is the rate of pay of apprentices?

A. In the second year I think they started at 40 per cent of the journeyman's scale.

Q. They start at 40 per cent and gradually work up to 100 per cent?

A. Work up to about 85 or 90, in the sixth year.

Q. After that they get the full journeyman's scale?

A. When they become members of the union they get the full journeyman's scale. In the first year they are under the supervision of the office as to wages.

(Testimony of Seth R. Brown.)

Q. You mean the first year there is no restriction?

A. That is right. They are not apprentices until the beginning of the second year. That is, they are not apprentice members of the union until their second year.

Q. Did your local have any unemployed members in Santa Ana? A. Oh, yes, they had some.

Q. How many?

A. I couldn't say the exact number. It is not a large [184] local; probably not many.

Q. About how many members does the local have, approximately?

A. I wouldn't want to say exactly.

Q. Give us your rough estimate.

A. I would say about 40. It fluctuates, you know, from time to time.

Trial Examiner Moslow: Anything further of the witness?

Mr. Ryan: Nothing.

Mr. Sargent: Yes.

Recross Examination

Q. (By Mr. Sargent) Did you mean to indicate, Mr. Brown, to the Examiner, that over time under the verbal contract began after 37½ hours?

A. It begins after the seven and one-half hours a day, not after 37½ hours.

Q. How many days was that?

A. Beg pardon?

Q. How many days was that per week?

A. How many days?

(Testimony of Seth R. Brown.)

Q. Yes. A. Five days.

Trial Examiner Moslow: So that a person might still earn overtime even though he didn't work 37½ hours a week?

The Witness: Yes, sir.

Q. (By Mr. Sargent) How many hours a week would a person [185] under the verbal contract have to work before he got paid overtime?

A. Seven and one-half hours a day, any particular day.

Q. I ask you whether or not under that verbal contract a person didn't have to work 40 hours per week before he was paid overtime during the week?

A. No, sir, I think not.

Q. Are you sure about that?

A. I never saw one contract that provided that. The contract itself would be the best evidence of it.

Q. As a matter of fact, you don't know what the clause was in regard to overtime in that verbal contract, whether it was 37½ or 40 hours a week, do you?

A. As I say, it is right there. You can look at it. I am satisfied, if you want a direct answer, that it provided that overtime would commence after seven and one-half hours of work. That's the usual provision in contracts, union contracts. It is different than the Federal statutes in reference to the matter.

Q. You are taking that from your general knowledge of the situation rather than this particular contract, aren't you?

Trial Examiner Moslow: Mr. Sargent, we can

(Testimony of Seth R. Brown.)

certainly establish what the facts are. I certainly will take the contract rather than this man's testimony as to its provisions.

Mr. Sargent: All right. [186]

Q. (By Mr. Sargent) Do I understand you, Mr. Brown, to indicate in response to the Examiner's question, that the verbal contract was only in effect for some 60 days after March, 1940?

A. I would—that's what the provision in the contract provides for, that I looked at last night; 60 days after the expiration of the agreement.

Q. Is it your position that thereafter that 60 days, ending May 1, 1940, that the company could have employed as many apprentices as it wanted to without violating the contract?

A. If they had, they would have raised an issue.

Q. Was the company, in your opinion, bound by the contract after May 1, 1940, or not?

A. That depends on the way you want to look at it. I would say they were morally bound, if they wanted to continue to accept the conditions. Both sides eventually agreed to that.

Q. As a matter of fact, the company did abide by the contract?

A. It did under certain conditions; they didn't entirely.

Q. They didn't raise the number of apprentices beyond three? A. No.

Q. It lived up to the conditions of the closed shop, and other conditions?

A. Except what has been brought out here with

(Testimony of Seth R. Brown.)

reference to [187] someone operating there that was not a member of the union.

Q. See if I understood you properly in answering another question of the Examiner's. Did you mean to indicate in answer to a question of his, that you knew of a number of cases where the local contract gave, or gives the employer greater discretion than under the I.T.U. rules, with respect to apprentices?

A. I wouldn't say there was such a contract. I am—the contracts are not available to me.

Q. You didn't mean to indicate——

A. We have got 10,000 of them.

Q. You didn't mean to indicate to the Examiner, then, that there were no contracts——

A. I don't think I so stated.

Q. I wanted to be sure.

A. I don't recall I did.

Trial Examiner Moslow: Your answer is now that you don't know of any?

The Witness: Yes, sir.

Q. (By Mr. Sargent) Did you say yesterday how wide your territory was, as a representative of the International?

A. Yes; Southern California, Arizona, and parts of Nevada.

Q. You don't have New Mexico under your direction? A. New Mexico?

Q. Yes. [188]

A. Well, it is part of my territory, but I never

(Testimony of Seth R. Brown.)

have been down there. They have very little difficulties, down there, apparently.

Q. Any contract that is executed by a local within your territory, if there is anything unusual about it, it would come under your jurisdiction?

A. If it was referred to me it would, yes. But I have never had a contract submitted from New Mexico to me.

Q. Would it be referred to you by the local or the International?

A. It wouldn't be referred to me unless I was assigned on a specific case.

Q. By the international?

A. By the international.

Q. And if something unusual would arise in some place throughout your territory, and a contract was entered into or was negotiated which was unusual, the International would assign you to that particular place?

A. Yes, sir; if the local union requested the services of a representative.

Q. Well, if the International thought something was being done in any place which was hostile to its best interests, it would send you down, would it not?

A. Yes, sir.

Mr. Sargent: That is all. [189]

Q. (By Trial Examiner Moslow) Just one second. About how many locals are there in this territory which you cover? Approximately?

A. There's about 20 in Southern California, and

(Testimony of Seth R. Brown.)

seven or eight in Arizona, and I don't think over five or six in New Mexico, as I recall.

Q. Is it a custom of the I.T.U. to have oral contracts?

A. That is not the custom. It is not the prevailing custom. They have them in some instances. Most of the contracts are signed contracts.

Trial Examiner Moslow: You are excused.

Mr. Ryan: Wait a minute.

Trial Examiner Moslow: I am sorry.

Redirect Examination

Q. (By Mr. Ryan) Mr. Brown, have you had experience respecting the International Typographical Union in areas other than the ones you have just mentioned? A. Yes, sir.

Q. When and where?

A. When I was vice-president of the International Typographical Union, between 1924 to 1928.

Q. Where were your headquarters then?

A. In Indianapolis, Indiana.

Q. What territory did you cover representing the union?

A. As vice-president I was under the jurisdiction of the [190] president, who would assign me to represent him at most any place in the jurisdiction of the United States or Canada.

Q. And while you were acting in that capacity did you have occasion to travel widely?

A. Very much so.

Q. Pursuant to your duties? A. Yes, sir.

Mr. Ryan: No further questions.

(Testimony of Seth R. Brown.)

Trial Examiner Moslow: You are excused.

(Witness excused.)

Trial Examiner Moslow: I believe, Mr. Sargent, you asked me some question about an assumption about the company's position. I stated there was no such assumption. I think I should state that my questioning doesn't entail such an assumption. I will, of course, come to no conclusion as to the company's views until I have heard the company's testimony.

We will recess for five minutes.

(A short recess was taken)

Trial Examiner Moslow: The hearing will come to order.

Mr. Ryan: Mr. Duke, please come to the witness stand.

